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THE INCOME TAX ACT, 1918.

BY

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AND

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Rather than lose his whole estate,
He that but little wise is,
Full gladly pays four parts in eight
To Taxes and Excises.

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TO

H. BERTRAM COX, C.B.,

SOLICITOR OF INLAND REVENUE,

TO WHOSE ADMIRABLE WORK IN CODIFYING
"THE MAZE OF INCOME TAX ACTS" THIS BOOK IS DUE,
IT IS,
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PREFACE.

THE authors were asked to edit the Act, but the edict of the Paper Controller made it impracticable to publish so voluminous a work. It was, however, thought that a "primer" would meet, in some measure, a public need. Barristers, Solicitors and Accountants, who are not expert in Income Tax law, want to glean quickly the general trend of previous decisions, and a short time devoted to this book will, it is hoped, direct them to the Sections of the Statute and decided cases—"the book at large"—which must be studied in the light of the facts of the particular case. The work has no official authority; neither of the authors has any connection with the collection or recovery of income tax for the Crown; they are therefore unfettered by the official tradition, good or bad. The words "maze of Income Tax Acts" on the previous page are the language of Cozens-Hardy, M.R., in *re* Cooper (1911) 2 K.B. 580. The admirable work of Mr. Bertram Cox in codifying those Acts has its well-earned eulogy from Lord Finlay inscribed in the pages of Hansard. Assuredly

the present Act, a rearrangement of Mr. Cox's work, is a great boon conferred in the stress of a great war. And it is to the determination of Lord Finlay, the distinguished Committee he called together, and the parliamentary draftsman, Sir F. Liddell, that the Act is due. We desire to acknowledge our indebtedness to Mr. Bertram Cox for valuable assistance on many points, and to Mr. W. E. Riddell, M.A., who was good enough to give much help in correcting the proofs and compiling the index and table of cases.

F. W. W. KINGDON.

H. E. KINGDON.

TEMPLE,

March, 1919.

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English Reports :—

L.J.—Law Journal Reports.
L.T.—Law Times Reports.

Scottish Reports :—

F.—Fraser (Court of Session cases 5th Series).
R.—Rettie (Court of Session cases 4th Series).
S.C.—Sessions Cases (1907 and onwards).
S.L.R.—Scottish Law Reporter.

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THE
INCOME TAX ACT, 1918.

THE "Income Tax Act, 1918" (Section 239 [1]) comes into force on 6th April, 1919 (*ibid*), but only as to duties of Income Tax granted by Parliament on or after that date. As to duties granted prior to the commencement of the Act the repeal of previous enactments, enumerated in Schedule 7, effected by S. 238, with saving clauses, is not to operate; the old law stands for the duties imposed prior to that date (S. 239). And the new Act is the framework, the bundle of provisions which for the future, without any need for express enactment applying them, will, once an Act has passed (S. 1), charging Income Tax at any particular rate, without more, apply to that tax (there are exceptions, *e.g.*, Ss. 42, 44, 50 and 55: "during any year as respects which this Section is continued in force"). Such tax will be charged for that year in respect of the property profits and gains described in the Schedules A. to E., in accordance with the rules applicable to the Schedules. The language of S. 1 does not, however, say that the general provisions (as distinguished from the matters mentioned) of this Act are automatically to apply and probably, as heretofore, the annual Act will apply the complete code. The Act deals with income tax and super tax; the provisions of the Taxes Management Act, 1880 (so far as it relates to Income Tax) are repealed and re-enacted, and, with the exception of the Inland

Revenue Regulation Act, 1890, all statutes bearing on income tax are brought into one enactment. In this book the provisions applicable to Scotland only or Ireland only have not been dealt with, and since the object of its publication is to outline what the taxpayer generally desires to know, the mass of administrative details which have no interest for him (save in the exceptional case where, being substantially wrong, he seeks to save himself by some technicality), are only referred to in outline. The general care and management of income tax is entrusted to the Commissioners of Inland Revenue, they have powers in relation to the tax and the officers who deal with it generally (S. 57). Wholly independent, in exercising their functions, of the Commissioners of Inland Revenue, the General Commissioners are concerned with the assessment and collection of the tax; by S. 58 all matters relating to the tax under Schedules A. B. and D., so far as not directed by the Act to be executed, and under Schedule E., so far as they are not executed, by any other Commissioners, are, as heretofore, to be executed by them, and they act for separate areas, termed divisions, their number per division, the mode of appointment, the procedure to be adopted on neglect to appoint them or on their refusal to act or in case of insufficiency of duly qualified persons, and their property qualifications, appear in Ss. 59, 60 and 65, the 2nd and 3rd Schedules to the Act (2nd Schedule incorporated by S. 59 (3) (11), the 3rd Schedule by S. 65). The General Commissioners have important judicial functions in relation to appeals from assessment, claims for abatement and relief, and penalties. The time for the first meeting of the General Commissioners for every division, for each year of assessment, is fixed for some date before 10th April,

they are to elect a clerk and, if they deem it needful, his assistant (S. 66). Section 71 provides for failure to keep the prescribed time in this and most other respects. The General Commissioners may appoint Additional Commissioners or may appoint General Commissioners to perform the functions of Additional Commissioners (Ss. 61–64); these functions are the making of assessments under Schedule D. in their district, subject to appeal to the General Commissioners. The property qualification of Additional Commissioners is half the value of that required for General Commissioners for the same division (S. 65 (2.)), and a General Commissioner is not precluded from acting as such by reason of acting and having acted as Additional Commissioner except in hearing or determining appeals from assessments made by him as Additional Commissioner (S. 65 (4)). The Clerk to the General Commissioners or his assistant is to be appointed clerk to the Additional Commissioners for the same division (S. 66 (3)). The "local justice" of General and Additional Commissioners has the drawback of competitors in business becoming acquainted with the taxpayer's affairs; the advantage usually is that the tribunal consists of unpaid business men of considerable experience who are independent of official control. The Special Commissioners ("Commissioners for the special purposes of the Income Tax Acts") are salaried Government officials. By S. 67 the Commissioners of Inland Revenue and such other persons as the Treasury by warrant appoint are such Special Commissioners, their authority is specific and not general as in the case of the General Commissioners, but given that authority has been conferred it is of the same extent (S. 67 (1) (2) and (3)) as that of any other Commissioners, but "save when acting in the place of

General Commissioners or in the matter of any appeal they shall not have power to summon any person to be examined before them but all inquiries by or before them shall be answered by Affidavit to be taken before one of the General Commissioners in their respective divisions." S. 67 (3).

In addition to General Commissioners, Additional Commissioners and Special Commissioners, certain officials, of the Bank of England and Bank of Ireland, the National Debt Commissioners, of each court or public department of office under the Crown, of the Houses of Parliament, any County Palatine, the Duchy of Cornwall, any Ecclesiastical Court or Ecclesiastical body or Corporation or of any inferior Court of Justice are, in reference to income tax matters within their respective offices, constituted Commissioners (sometimes called *ex officio* Commissioners) (Ss. 68 and 69) and a similar provision is made by S. 70 in relation to corporate cities, boroughs, towns or places (Mayor and members of Corporation not exceeding 7) in relation to public offices or employments of people therein and in every guild, fraternity, company or society therein. The officers who either under the Commissioners of Inland Revenue or the General, or other, Commissioners administer the Act are Inspectors and Surveyors, Crown officials, and Assessors appointed by the General Commissioners (S. 76) (assessors refusing to undertake the office, etc., incur a penalty (S. 79)) or by Magistrates or Justices (S. 76 (7)). In certain cases the Surveyor of the district may execute the duty. Within the Administrative County of London the Surveyors are to be the only assessors for the tax under Schedules A. and B., and where the annual value of any property adopted for tax under Schedules A. and B. has been prescribed

to be taken as the annual value for any subsequent year the Surveyor is to be the assessor of tax under Schedules A. and B. for that year (S. 77). The Surveyor of Taxes is the official who is brought into closest connection with the taxpayer and he usually represents the Crown on an appeal to General Commissioners against an assessment. Collectors for each parish, variously appointed either by the General Commissioners (acceptance of this office is optional, provided the person appointed duly notifies his refusal S. 80 (3)), or the Commissioners of Inland Revenue (Ss. 80 and 84). The Commissioners of Inland Revenue may require Collectors to give security for due performance of their duties, and the General Commissioners may also require them to give such security, and two inhabitants of a parish (if they are charged to tax) may require the General Commissioners to take such security. The nature and extent of the security are specified. On failure of the General Commissioners to appoint a Collector for any parish on or before 31st May in any year the power to appoint for that *and every subsequent year* passes to the Commissioners of Inland Revenue, and in this respect the failure to observe the time is incurable (S. 71). If an action is brought against a Collector for anything done pursuant to the Act it is to be defended by the General Commissioners for the division where the Collector has been appointed by them or acted under their Warrant or directions, and the costs of such action can be defrayed by a levy within the parish for which the Collector was appointed or in which the cause of action arose. General, Additional, Special, and *ex officio*, Commissioners; Surveyors, Assessors, Collectors and officers recovering tax; a Clerk to any Commissioners and a Clerk's assistant; have to make the

declarations given in the 4th Schedule to the Act (S. 89) before acting in execution of their respective offices in relation to the tax under Schedule D. The declaration imposes an obligation of secrecy in relation to Schedule D. and to taxation and information relating to it; in other respects the declarations are to act fairly and impartially, etc. The Poor Law parishes in England and Wales are as a rule the parishes for Income Tax purposes but there are many provisions as to transfer of a parish from one division to another: for uniting two or more parishes; for dividing a parish into districts: for grouping several parishes as one: for deciding doubtful questions as to whether lands are in one parish or another: for annexing extra parochial lands to a neighbouring parish; and by S. 97 (4) if (*a*) a doubt arises as to the parish in which a person ought to be assessed and charged to tax or (*b*) a person has been or is liable to be assessed and charged to tax in two or more parishes, the Commissioners of Inland Revenue may order that any such person shall be assessed and charged in such parish as appears to them to be proper and he shall be assessed and charged accordingly. Parish is defined by S. 237 of the Act as any "city, town, ward, township, tithing, parish, place or precinct or part thereof for which a separate assessment of income tax has been or can be made and for which an assessor or collector has been or can be appointed." The parish is the area of assessment and collection, the division the area of the General Commissioners.

The tax itself, which is intended to reach income of all kinds, differs necessarily in its incidents according to the source of income. Schedule A. is mainly a property tax on the annual value of a subject matter which is either well known or readily ascertainable and

the duties of assessment are comparatively simple, but No. III., trading concerns dealing with land, *e.g.*, mines, railways, canals, etc., must be excepted from this statement—Schedule B. which taxes the profits of occupation of a large part of the subject matter which is the source of income taxed under Schedule A. by reason of the measure statutorily adopted (*i.e.*, by reference to the same main basis as Schedule A.) also presents as a rule little difficulty in assessment. On the other hand Schedule A. exemplifies collection at the source, for the duty is assessed (generally) on the occupier who has an inalienable right of deduction from the rent he pays to the owner. Under No. III. of Schedule A. assessment presents similar difficulties to Schedule D. and the rules of Schedule D. are applicable unless inconsistent with some express provision in Schedule A. applicable to this No. III. Schedules C. and E. are almost self assessing, but Schedule D. presents considerable difficulty not only in the application of the rules for determining taxable profits and gains when the earnings and expenditure are known, but also in ascertaining without undue inquisition what the earnings and expenditure are. Passing to the general principles of the tax itself the object is to tax profits, real or assumed, which arise from specified sources of income. These sources are specified in the five Schedules, and the method of calculating the taxable income for the year from each source is prescribed in detail. And since the measure for the year differs alike under the different schedules and under different heads of the same schedule, the determination of the particular schedule, or particular subheading, may be of considerable importance as the following table of cases shows.

CASES IN WHICH DISPUTE HAS BEEN RAISED AS TO THE APPLICABLE SCHEDULE OR THE APPLICABLE HEAD, CASE, OR NUMBER, UNDER A SCHEDULE:—

GAS WORKS.

Foreign ..	If carried on by Company resident here	Schedule D. Case 1.	Imperial Continental Gas. Assoc. *v.* Nicholson (1877) 37 L.T. 717.
British ..	.. ..	Schedule A. No. III.	

MINES.

Foreign ..	If carried on by Company resident here	Schedule D. Case 1.	Alianza Co., *v.* Bell (1906) A.C. 18.
British ..	.. ..	Schedule A. No. III.	

SLAUGHTER HOUSES.

British ..	Not carried on for profit	Schedule A. No. 1. Not No. III.	Harris *v.* Edinburgh Corporation (1907) 44 S.L.R. 873.

SEWER.

British ..	Not carried on for profit (as a concern)	Schedule A. No 1, not No. III.	Ystradyfodwg, etc., Board *v.* Bensted (1907) A.C. 264.

BRICKFIELDS.

British ..	.. ..	Probably No. 1 in Schedule A. rather than No. III (r. 3).	Edmonds *v.* Eastwood 2 H. & N. 811.

COAL AND IRONSTONE MINES (BRITISH) (NO SURFACE).

Let on lease but not yet worked by lessee. Minimum rent therefor.	Assessment on lessor in respect of rent under Schedule A. No. II. r. 6 not on Lessee under Schedule A. No. 1.	Hill *v.* Gregory (1912) 2 K.B. 61.

COMPANY RESIDING IN THE UNITED KINGDOM.

Taxable on profits under Case I. Sched. D. or interest of investments under Case III. Sched. D. at option of Commissioners.	Clerical Medical and General Life Assurance Society *v.* Carter (1889) 22 Q.B.D. 444.
Similarly Commissioners may elect to charge under Case I. (profits) or Case IV. (interest received here from foreign securities	Norwich Union Fire Insurance Co. *v.* Magee (1896) 73 L.T. 733. Liverpool and London and Globe Insurance Co. *v.* Bennett. (1913) A.C. 610.
Interest (full amount for previous year) or profits (average of three preceding years) Case III. or Case I. Sched. D. (question being whether payment was "interest.")	Pretoria Pietersburg Rail. Co. *v.* Elwood (1908) 98 L.T. 741.
New Association succeeding to business of partnership and showing the falling short of profits from "specific cause." taken out of Sched. D. Case I. and brought under Case VI. Sched. D.	Ryhope Coal Co. *v.* Foyer (1881) 7 Q.B.D. 485.
Company residing in the United Kingdom (working railway in Brazil) Case I. not Case V. Sched. D.	San Paulo Rail. Co. v. Carter (1896) A.C. 31.
Company residing in United Kingdom (working breweries abroad) Case I. not Cases IV. and V. Sched. D.	St. Louis Breweries *v.* Apthorpe (1898) 79 L.T. 551. Apthorpe *v.* Peter Schoenhofen Brewing Co. (1899) 80 L.T. 395.
Share of non-active partner resident here in profits of business carried on by his firm abroad, Case V. Sched. D., not Case I. Sched. D.	Colquhoun *v.* Brooks (1889) 14 App. Cas. 493.
Annuity to aged and infirm Minister on retirement under Case III., not Case VI., Sched. D.	Duncan's Trustees *v.* Farmer (1909) 46 S.L.R. 857.

The assessment is made and the duty is payable wholly or in part before the year for which it is payable has ended, and it follows that the taxable income does not pretend to represent the actual income of the year

of assessment. It is sometimes stated that this or that receipt is not taxable; a common statement is that a voluntary allowance is not taxable or that a mere realization of property is not taxable. Both statements are, as practical statements, valuable and correct: but in neither case does the statement connote the ground on which it is correct. Go through the schedules and the rules and see whether any Schedule and its rules enable the Crown to claim. If a father makes a voluntary allowance to his son or a voluntary allowance is made on purely personal grounds to a clergyman, no income tax attaches: but if a voluntary allowance is made to the incumbent of a benefice as such, it will not escape the tax. In the one case the words do not, in the other they do, extend to the case. A. realizes an estate which he has held for some time and obtains more than he gave for it—there is no head of charge that applies, but if A. carries on a business in which he buys and sells land and makes profits it will not help him to urge that he has merely changed his investments. Again, no man is to be taxed on the same income twice, but the object of the Act is to spread the net as widely as possible and if two Schedules apply it is the Crown, not the subject, has the choice under which Schedule the tax shall be imposed. Further, in interpreting the charge, it may be that the rules form part of it and their inapplicability to a particular subject matter may lead to exclusion, where independently of the rules the case would be within that head of charge. Colquhoun *v.* Brooks (1889) 14 App. Cas. 493. Tennant *v.* Smith (1892) A.C. 150. This taxation of income by Schedules with different machinery lies at the root of "exemption abatement and relief"—provisions also necessitated by that convenience to the Revenue known as "taxation at the

source." For income tax to be levied at the source involves uniformity of rate and, since rates are not uniform as applied to persons, for they vary with the total amount of the income, it follows that income tax deducted and received in the first instance by the Crown must be recoverable from the Crown later in many cases by the subject. B., an occupier, is assessed to landlord's Property Tax and pays it, he pays his rent to A. and deducts tax. A's. total income from all sources is under £130. B. must pay the tax deducted to the Crown and A. must get it back. The State cannot let B. judge whether A. is entitled to total exemption, for that depends not on the income under Schedule A. only but on A's. income chargeable under all Schedules of which B. has not the means of judging and the State has.

The Income Tax Act, 1918, contains in Ss. 1 to 3 and Schedule 1 the charge of income tax. Ss. 4 to 8 contain the charge and provisions in relation to Super-tax. Ss. 9 to 41 (Part III.), Exemption Abatement and Relief; Ss. 42 to 56 (Part IV.), Special Provisions. Ss. 57 to 97 (Part V.), relate to administration, these are sufficiently referred to above. Ss. 98 to 132 (Part VI.), relate to the machinery of assessment and are of little general interest. Ss. 133 to 152 (Part VII.), relating to Appeals and Ss. 153 to 185 (Part VIII.), relating to Collection are only referred to in outline. Ss. 186 to 206 (Part IX.) (special provisions applicable to Ireland), are omitted as outside the scope of this book. Ss. 207 to 239 (Part X.), Miscellaneous Provisions, are dealt with in so far as they are of general interest. Of the Schedules –Schedule 1 (containing Schedules A., B., C., D. and E.) is dealt with at length. The other Schedules are from their length omitted. Schedule 7 is the list of repealed enactments.

SCHEDULE A.

Tax under Schedule A. shall be charged in respect of the property in all lands, tenements, hereditaments and heritages in the United Kingdom for every 20s. of the annual value thereof. (Section 1 of Act and First Schedule—Schedule A.)

Within the administrative County of London (its limits appear from 32 and 33 Vict. c. 67 s. 45, and 51 and 52 Vict. c. 41 s. 40) the valuation lists under the Valuation (Metropolis) Act, 1869, are by that Act made conclusive (Section 45) for purposes of Income Tax—so they remain. The rules under Schedule A. are not to affect the *valuation* of lands, etc., valued under that Act (in particular general rule of No. I., Rules 1 and 3 of No. II., Rules 1 to 14 of No. IV., Rules 6 and 7 of No. VII., and Rules 5, 6 and 7 of No. IX.; these rules are in the Act distinguished by an asterisk). Within the administrative County of London therefore the position is this:—Valuation is dependent on the provisions of the Valuation (Metropolis) Act, 1869; the more material provisions of that Act are the definitions of hereditament and gross value (S. 4); the periodic valuation (quinquennial) (S. 43); the supplemental list in case of alterations, additions thereto and erections thereon, subsequent to the original list (Ss. 46 and 47); the hereditaments excepted (S. 51), an almost negligible exception to which the valuation rules of Schedule A. apply; and Section 45 which not only makes the valuation lists conclusive, as already stated, but also provides that the gross value stated therein shall be the "annual value" for the purpose of the Income Tax Acts. The rules in the Income Tax Acts are, however, to apply generally to hereditaments within this area "which are chargeable according to profits and not

according to gross value " (*i.e.*, those falling under Rule No. III. of this Schedule), and they apply " as respects the mode of charging the occupier of land subject to a tithe rent charge in respect of such tithe rent charge." As to hereditaments outside the area of the Administrative County of London the practice has hitherto been to value every five years and during each of the last four years of that period to make the value adopted in the first year conclusive for those years also, this is effected by the insertion of a provision in the Finance Act of each of those years, *e.g.*, Section 10 (3) of the Finance Act, 1915, which enacts :—

> " The annual value of any property which has been adopted for the purposes either of Income Tax under Schedules A. and B. in the Income Tax Act, 1853, or of inhabited house duty, for the year ending on the fifth day of April, nineteen hundred and fifteen, shall be taken as the annual value of such property for the same purpose for the next subsequent year ; provided that this sub-section :—
>
> (*a*) " so far as respects the duty on inhabited houses in Scotland, shall be construed with the substitution of the twenty-fourth day of May, for the fifth day of April ; and
>
> (*b*) " shall not apply to the Metropolis as defined by the Valuation (Metropolis) Act, 1869."

The effect of such a section has been considered in Turner *v.* Carlton (1909) 1 K.B. 982 and Gundry *v.* Dunham (1915) 32 T.L.R. 142.

Schedule A. divides properties into three classes, grouped under rules. Rule No. I. embraces all lands, tenements, or hereditaments, or heritages capable of actual occupation, except the properties mentioned in Rules No. II. and No. III. of that Schedule. This is the general head and applies to all corporeal heredita-

ments capable of physical occupation except certain concerns mentioned in No. III., *e.g.*, it applies to land and dwelling houses, shops and buildings generally. Rule No. II. embraces incorporeal hereditaments, *i.e.*, those not capable of physical occupation, such as tithes, manorial dues and services and fines.

Rule No. III. embraces certain mines and quarries, ironworks, gas works, tolls, railways, docks, ferries and other "concerns"; these are corporeal and incorporeal but are viewed from the point of management as commercial undertakings.

As to I. (Rule I).

Schedule A. No. 1 General Rule for estimating annual value:—"Rack rent at which they are worth to be let by the year." These words have the same meaning as in the Statute of Frauds, they mean best rent reasonably obtainable without fine or other consideration on the assumption that the contract of tenancy "by the year" is silent as to repairs, and that repairs, rates and taxes fall where on such a letting the law or usage casts them. If the lands, etc., have been let by agreement, commencing within the period of seven years preceding the 5th April next, before the time of making the assessment, the rent is *prima facie* the criterion of annual value. If land and movables are let at a single rent it should be apportioned, Campbell *v.* I.R. (1879) 17 S.L.R., 23 With No. I General Rule must be read No. IV., "Rules for estimating annual value." These rules in the main expound what is intended by the term "rack rent" in the General Rule, the approximate effect of which has been generalized above. No. IV. Rule 1 (*a*) Where the landlord has agreed to pay any parochial rates *by law chargeable on the occupier* or any composition for tithes the annual value is to be estimated exclusive of such public local charges or composition for tithes *bona fide*

paid by the landlord in and for the year preceding the year of assessment. Where the owner is also occupier (Rule 2) and has paid such public local charges or composition for tithes the annual value is to be estimated in like manner (*i.e.*, what the property is worth to be let by the year if the tenant paid them instead). If the assessor is satisfied with the amount of annual value in the statement delivered by the taxpayer he is to assess on the amount; if not, or in default of any statement, he is to estimate the annual value to the best of his judgment and assess thereon (Rule 3). Where the annual value is to be ascertained in accordance with general rule No. I. (Schedule A.) and that value cannot otherwise be ascertained and the last poor rate in the parish was made on annual value estimated "under the said general rule" (*i.e.*, similarly computed), or on a proportionate part thereof the assessor may make his assessment by reference thereto but on the full amount of annual value (*i.e.*, gross) instead of on a proportionate part thereof (Rule 4). See Grinter *v.* Fleming (1900) 2 Q.B. 735. Where annual value of a tenement with its offices, gardens and lands or any other separately occupied lands are of an annual value under £10, the assessor may estimate its annual value without requiring a statement to be delivered unless the Surveyor objects (Rule 5). If a tenant at rack rent produces to the assessor his lease or agreement in writing under which he immediately holds premises chargeable under general rule No. I. of Schedule A. and it appears the premises have been let within the preceding 7 years and that the only consideration is rent reserved, the assessor may assess according to the rent (Rule 7). The tenant is required to produce his lease or agreement on request by assessor (Rule 8). But the assessment is not to be binding if it appears to Commissioners that (*a*) the full con-

sideration in money or value for the lease or rent *bona fide* paid is not therein expressed or (*b*) that the stated rent is less than rack rent by reason of repairs or improvements effected or to be effected by the tenant or his assigns or (*c*) the lease or agreement was in any other respect made to conceal the annual value or has been assigned for consideration (Rule 9). If the landlord agrees to discharge tenant's rates, taxes, assessments or duties (*i.e.*, those by law charged on the occupier. Rule 1 (*a*) of No. IV. Rules) the consequent increase of rent; any decrease of rent resulting from landlord's charges being assumed by the tenant: any decrease in rent by reason of expenses incurred or to be incurred by the tenant or any assigns (mentioned in lease or not): any deductions (see Rules 1 and 2 of No. IV. Rules) on account of any public rate or assessment—are to be had regard to in making the assessment (Rule 10). If a demise for years of lands was made in consideration of rent reserved and improvements to be made at tenant's cost but it is shown to Commissioners that the rent reserved was in view of the improved value to be expected therefrom based on an estimate of mean annual value throughout the term (*i.e.*, exceeding actual annual value at one time and less at another) the annual value is to be taken to be the rent reserved without variation (Rule 11). A tenant at rack rent under a parol demise from year to year made within the last 7 years (Rule (1) of No. I. General Rules) and a tenant who neither holds, nor can call for production of, the lease or agreement under which he holds premises demised within the last 7 years (and shows his inability to produce) must deliver to the assessor an account in writing signed by him stating the annual rent reserved and thereupon the same rules apply to assessment as after production of lease or agreement (Rule 12). Lands held for a longer

period than 7 years by a tenant at will or under a demise from year to year are to be assessed at their annual value unless the tenant satisfies the General Commissioners they are held under a demise commenced by agreement made and rent fixed within the last 7 years on determination by notice of the former demise by due notice within that period (Rule 13). Wilfully delivering false account (of rent) or neglecting or omitting to produce any lease or agreement with intent to conceal annual value or diminish the estimate thereof, £20 penalty and treble the tax chargeable to be computed on the annual value of the premises and included in the assessment (Rule 14).

As to II. (Rule No. II.). Rules for estimating the annual value of certain lands, tenements, hereditaments or heritages which are not to be charged according to the preceding General Rule (*i.e.*, Rule No. I.) and for determining the person chargeable.

Person to be Charged.	No. of Rule referring to Subject Matter.	Subject Matter.	Basis of Annual Value.
By rule 4 person entitled or his lessee or tenant, agent or factor.	Rule 1	Tithes if taken in kind.	Amount for one year based on profits of 3 preceding years.
NOTE.—As to compositions, rents or other payments in lieu of tithes by Rules No. VII. rule 6, the occupiers of the lands from which the tithes arise or the person liable to make such payments may be assessed instead of the person entitled, etc.	Rule 2	Dues and money payments in right of the Church or by endowment or in lieu of tithes (not being tithes arising from lands).	Same.

Person to be Charged.	No. of Rule referring to Subject Matter.	Subject Matter.	Basis of Annual Value.
	Rule 3	Tithes arising from lands if compounded for and all rents and other money payments in lieu of tithes arising from lands (except rent charges confirmed under the Tithe Act, 1836).	Profits therefrom for year preceding.
Lord of Manor or royalty, or person renting same. Rule 5.	Rule 5	Manors and other royalties, including all dues and other services or other casual profits (not being rents or other annual payments reserved or charged).	Amount for one year based on averaging profits of 7 preceding years.
Receiver of Fines (Rule 6). If fines or any part have been applied as productive capital on which a profit has arisen or will arise which is otherwise chargeable for the year in which the assessment is made the Commissioners may *pro tanto* discharge the assessment. A mere temporary deposit of the fines at interest at a Bank is not within this provision. Lord Mostyn *v.* London (1895) 1 Q.B. 170.	Rule 6	Fines in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by custom thereof).	Profits received within preceding year.

Person to be Charged.	No. of Rule referring to Subject Matter.	Subject Matter.	Basis of Annual Value.
Receivers of profits or persons entitled	Rule 7	All other profits not before enumerated (other than profits liable to deduction pursuant to Rules 1 and 4 of No. VIII. of this Schedule) arising from lands, tenements, hereditaments or heritages not being in the actual possession or occupation of the person to be charged.	Average amount for one year of profits averaged on the profits of as many years as appears to Commissioners to be fair and equitable. All these bases are subject to Rule 8. If by reason of the possession or interest of the person to be charged having commenced within the period on the basis of which profits have (as above) to be computed, the statement required to lead to assessment cannot be made out — the profits of one year are to be estimated in proportion to the profits received since his possession or interest commenced.

III. (Rule No. III.). Rules for estimating the annual value of certain other lands, tenements, hereditaments, or heritages which are not to be charged according to the preceding General Rule. This third class deals with hereditaments corporeal and incorporeal which are managed as concerns with a view to profit—if not carried on with a view to profit the charge under this class does not apply to the hereditament but it may fall under No. I. (above). Ystradyfodwg and Pontypridd Main Sewage Board *v.* Bensted (1907) A.C. 264. Further, Schedule A. generally relates only to properties and

concerns therein in the United Kingdom. Imperial Gas Association *v.* Nicholson (1877) 37 L.T. 717 (foreign gas works controlled and managed in this country by an English company which owned them assessable under Schedule D.) Alianza Company *v.* Bell (1906) A.C. 18.

Person to be Charged.	No. of Rule referring to Subject Matter.	Subject Matter.	Basis of Annual Value.
	Rule 1	Quarries of stone, slate, limestone or chalk.	Profits of preceding year.
	Rule 2	Mines of coal, tin, lead, copper, mundic, iron and other mines.	Average amount for one year of profits averaged on 5 preceding years. Proviso if such mine from some unavoidable cause has so decreased and is so decreasing in annual value that the five years' average will not give a fair estimate of value the General Commissioners of the division in which the mine is situate may, on proof thereof, compute the annual value on the actual amount of profits in the last preceding year, subject to such abatement on account of diminution of duty within the current year as is in this Act provided in other cases and if the mine has from some unavoidable cause wholly failed the Commissioners may on due proof discharge the assessment.

Person to be Charged.	No. of Rule referring to Subject Matter.	Subject Matter.	Basis of Annual Value.
As to all these concerns mentioned in Rules 1, 2, and 3 by Rule 4 hereof the person to be charged is the person or body of persons carrying on the concern or the agents or officers who have direction and management and receive the profits.	Rule 3	Ironworks, gasworks, salt springs or works, alum mines or works, water works, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways, and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands, tenements, hereditaments or heritages.	Profits of the preceding year. Highland Railway Co. *v.* Special Commissioners (1885) 23 S.L.R. 116. By Rule 9, if in estimating the value of any property enumerated in Rules 1, 2, and 3, the statement leading to assessment cannot be made out because the possession or interest of the person to be assessed and charged commenced within the period on the basis of which profits are to be computed the profits of one year shall be estimated in proportion to the profits received since that possession or interest commenced.

By the remaining rules under No. III. it is provided that tax shall be charged on the profits before any distribution to any person entitled to any share thereof or to the owner of the soil or property or to any creditor or other person whatever who has a claim on the profits and every such person shall allow a proportionate deduction of the tax charged (Rule 5). Taylor *v.* Evans (1856) 1 H. and N. 101. Foley *v.* Fletcher (1858) 3 H. and N. 769.

The assessment and charge are to be exclusive of any lands used or occupied in connection with the con-

cern which have been separately assessed and charged under the Act (Rule 6). The computation in respect of any such mine carried on by a company of adventurers is to be made jointly in one sum but an adventurer may be assessed and charged separately if he makes a declaration of his proportion or share in the concern for that purpose (Rule 7 (1)) and when so separately assessed and charged may set off against his profits from one or more of such concerns loss sustained in any other such concern as certified by the Commissioners for the division where the loss was sustained (Rule 7 (2)) and in any such case one assessment and charge only is to be made on the balance of profit and loss and in the parish where the adventurer is chargeable to the greatest amount (Rule 7 (3)). The properties described in Rules 1, 2 and 3 shall be assessed and charged in the manner herein mentioned according to the rules applicable to Schedule D. *so far as the same are consistent with the rules of this Number* (Rule 8). The rules of Schedule D. as to deductions from gross receipts to arrive at assessable profits and the rules as to deductions and allowances (Schedule D.) apply but measure of annual value of such profits for the year of assessment is expressly prescribed under these rules and to introduce the computation of Schedule D. where it prescribes a different number of years would be to import rules inconsistent. "Mines would be reduced from a five years' to a three years' period." "Quarries would be raised from a single year to three," per Lord Blackburn in Coltness Iron Company *v.* Black (1881) 6 App. Cas. 315; Dillon *v.* Corporation of Haverfordwest (1891) 1 Q.B. 582; and see Wakefield Rural District Council *v.* Hall (1912) 3 K.B. 328. In the present act S. 101 of the Income Tax Act (1842) is made one of the rules of Schedule D. (Rule 13 of rules applicable to Cases I. and II. of that Schedule)

and the right to set off loss on one of the concerns against profits on another would obtain. This is a statutory reversal on grounds of hardship of the point of set off decided in Wakefield Rural District Council *v.* Hall. Clearly the principle that Rule 8 of this No. III. does not transfer the concerns from Schedule A. entirely and for all purposes to Schedule D. is as true as that Section 8 of the Revenue Act, of 1866, did not.

General Questions of Liability under Schedule A.

As to hereditaments within No. I., those capable of actual occupation,—the occupier being as a rule the person to be charged—the duty being on the annual value—this head may be inapplicable because the person actually assessed or the only person (if anyone at all) who could be assessed is not "occupier." So in Hill *v.* Gregory (1912) 2 K.B. 61, the lessee of minerals (coal, iron and fireclay) had not entered under the lease and was therefore not occupier. (For the first two years of the lease the minimum rent reserved thereby had been paid and the lessor was assessed in respect of this rent under Schedule A. No. II. Rule 6). In Middleton *v.* Inland Revenue (1876) 13 S.L.R. 378, and Revell *v.* Scott (1895) 32 S.L.R. 585, unsuccessful attempts were made to escape tax on this ground. In Middleton's case the contention was that the lessee of a deer forest ought to be assessed only in respect of the *agricultural* value of the deer forest (nil in effect) on the ground that though he had a right of sporting, for which the rent was in truth paid, that was a distinct incorporeal right not capable of occupation. In Revell *v.* Scott (1895) 32 S.L.R. 585, a farm and the right of sporting over it were held by the same tenant under separate leases (held

liable to be assessed under Schedule B. on aggregate amount of sporting and agricultural rents payable under the two leases—as occupier under both leases). In Tennant *v.* Smith (1892) A.C. 150, the bank clerk who resided on the premises had not occupation, which was in his employers (the Bank), he could not, therefore, be assessed under Schedule A. and it was unsuccessfully attempted to make him liable in respect of the value of his duty to reside there rent free (he could not let the premises) under Schedule E. In Edinburgh Southern Cemetery Co. *v.* Kinmont (1889) 27 S.L.R. 71, the point of occupancy was set up (the Cemetery Co. was not assessed or assessable under Rule I.), it was contended that the Company had parted with the exclusive use of the lairs (grave spaces) but the Court held the occupation of the Cemetery as a whole, including the ground of these lairs, was in the Company.

By Rule 2 of No. VII. ("Rules as to persons chargeable") every person having the use of any lands or tenements shall be deemed to be the occupier thereof. In Ystradyfodwg, etc., Board *v.* Bensted (1907) A.C. 264, occupation of a sewer was established and this rule was relied on in argument though the decision did not depend on it.

In Bent *v.* Roberts (1877) 3 Ex. Div. 66, the only occupier was the Crown—the only liability to tax was under Schedule A. and the Crown the only person chargeable could not be charged.

Assize Courts and Police Stations are outside the scope of the charge for the same reason. Authorities are :—

Coomber *v.* Berks JJ. (1883) 9 App. Cas. 61.

Adam *v.* Maughan (1889) 27 S.L.R. 64.

Brown *v.* Smith (1901) 39 S.L.R. 20.

If the property has an annual value, *i.e.*, would fetch a rent from a hypothetical tenant so that it is

capable of falling under No. I. of this Schedule, then, though the property is of a kind mentioned in No. III. of this Schedule, if it is outside that class because not managed as a commercial concern, *i.e.*, with a view to profit, it properly falls within No. I. Ystradyfodwg, etc., Board *v.* Bensted (1907) A.C. 264.

So Harris *v.* Corporation of Edinburgh (1907) 44 S.L.R. 873, slaughter houses for public use at charges merely intended to render them self-supporting, but not a source of profit.

As to No. II. (Rule No. II.).

On the meaning of the term "profits" as used in Rule 2 of this rule see Duke of Norfolk *v.* Lamarque (1890) 24 Q.B.D. 490.

Rule 3 of this rule excepts tithe rent charge and in effect throws it back from No. II. to No. I. (Rule No. I.).

The position as to tithe rent charge is this :—outside the administrative County of London, if the owner of the tithe rent charge makes a return for the purpose of an assessment being made upon him, the Commissioners may make a direct assessment on him deducting public local rates, taxes, etc., charged thereon in the preceding year and the rent charge in that case is to be deducted from the annual value of the land (Rule 7 of No. VII. Schedule A.). If the tithe rent charge owner does not make such a return Rule 4 of No. VIII. Schedule A. is applicable and whether the landlord is assessed under Schedule A. or has not been so assessed but has suffered deduction of income tax from his rent (see Rule 4), he is entitled for each £ of tithe rent charge to deduct the rate of tax in force during the period the payment of tithe rent charge was accruing due (the general provisions of Rule 12 (all schedules rules) which would be capable of extending to tithe rent charge seem excluded by the special provision as to tithe rent charge

in No. VIII. Schedule A., *i.e.*, Rule 4 thereof already referred to). As to the basis of assessing tithe rent charge when the subject of direct assessment, Stevens *v.* Bishop (1888) 20 Q.B.D. 442 presumably still applies, the reasoning there would now be restated thus :— Rule 7 of No. VII. Schedule A. directs assessment under this Schedule but No. I. or No. II. thereof alone can apply to estimate annual value and since Rule No. II. is clearly inapplicable, No. 1. must apply, even though tithe rent charge is not " capable of actual occupation " strictly, and in estimating the annual value the amount necessarily expended in collection of the tithe rent charge must be deducted. In that case it had been admitted the amount of the rent charge could not be realized without the expenses of collection being incurred.

On the meaning of " royalties " in Rule 5, see Edmunds *v.* Eastwood (1858) 2 H. and N. 811.

As to III. (Rule No. III). There are three sub-classes of this class in Rules 1, 2 and 3. Liability to assessment in each sub-class is based on " profits," in sub-classes 1 and 3 profits in the preceding year, in sub-class 2 based on profits averaged from those of the last five years (with exceptions as therein mentioned). And " profits " imply a commercial undertaking conducted with a view to making profit. If not so conducted then whatever other schedule or class of this schedule may apply the case does not fall within No. III. So in Ystradyfodwg, etc., Board *v.* Bensted (1907) A.C. 264. In that case a statutory body had a sewer partly carried on arches over ground vested in and used by a sewage board primarily to carry off the drainage of the district but allowed to be used by other sewerage districts in consideration of a money payment. It was held that since it was not carried on with a view to profit, and Rule 3 deals with concerns which do contemplate profit, the sewer though a

" drain " was not such a " drain " as Rule 3 contemplated, and that the Sewerage Board were not chargeable under No. III. of Schedule A., but the question usually arises in reference to Municipal undertakings. Here as in cases under Schedule D. part only of the undertaking may be on a commercial basis and as a consequence the " profits " of that part only assessable. See, *e.g.*, Dillon *v.* Corporation of Haverfordwest (1891) 1 Q.B. 575. In Glasgow Corporation Water Commissioners *v.* Inland Revenue (1875) 12 S.L.R. 466, an unsuccessful attempt was made to charge the Corporation without distinguishing between the part of the undertaking carried on with a view to profit and the part held not to be assessable as not involving the receipt of profits. (So in Inland Revenue *v.* Edinburgh Magistrates (1907) 44 S.L.R. 873.) At a later date Miller *v.* Glasgow Corporation Water Commissioners (1886) 23 S.L.R. 285 established the liability of surplus revenue from supply of water outside the limits of compulsory supply and from supply of water within those limits for purposes of trade, manufacture, etc., excluding the estimated proportion of surplus revenue arising from domestic rate and public rate levied within the area of compulsory supply. In the earlier case (1875) 12 S.L.R. 466, it had been held that since by Statute the compulsory water rate was to meet the expense only and was to diminish, if more than sufficient for that purpose, no profit had been made within the limits of compulsory supply and that there was no sufficient evidence of surplus or " profits " from transactions outside those limits. On the other hand the gas of the Corporation was managed with a view to profit and any surplus was carried to the credit of the Corporation for general purposes. Inland Revenue *v.* Glasgow Corporation Gas Commissioners (1876) 13 S.L.R. 356. Now if " profits " are earned the subse-

quent application of them is immaterial, Mersey Docks and Harbour Board *v.* Lucas (1883) 8 App. Cas. 891, in the absence of some particular exemption from tax dependent on mode of application: but a mere excess of gross receipts over expenditure may be the result of miscalculation beforehand as to probable cost that in itself does not establish "profits" within this charge, the broad point is whether there is a concern run on profit-earning lines and having made profits. Given there are profits, their quantum depends on the broad principle, here as in Schedule D., that profits are gross receipts less the expenditure to earn them. But this term "expenditure to earn them" must be read in connection with the rules as to what deductions may, and what may not, be allowed, given in detail below, and the question whether the body of persons assessed is liable at all under No. III., may depend on the view taken of a claimed deduction. Thus in Edinburgh Southern Cemetery Co. *v.* Kinmont (1889) 27 S.L.R. 71 it was contended that the Company should be assessed under No. I., and according to Rule 1, on the annual value of the land, *i.e.*, what a hypothetical tenant would have given for the ground and not on the turnover of the Company. The Company sold grave spaces, and received fees, for funerals and certificates, and earned from those sources £3,356 and spent £822 in expenses of management. But it was urged that of this £3,356 a considerable amount was merely a realization of part of the Company's assets and not income at all. This contention, equally applicable to a wasting asset such as a mine, and in both cases untenable, being rejected, the Court necessarily as a result held that the Company were assessable under what is now No. III. of Schedule A. (then Schedule A. No. III. Rule 3 of 5 and 6 Vict. c. 35 the I.T.A. 1842). See London Cemetery Co. *v.* Barnes

(1917) 2 K.B. 496 as to calculating "profits" when repairs in perpetuity are undertaken for lump sum payments. The guiding principle as to profits taxable under the Income Tax Law is in part attributable to the general provisions in Section 209 of this Act (set out p. 209), in part to inferences from particular rules dealt with later in detail and in part also to the tax itself, reading one Schedule with another; on the other hand the general principle that profits are gross receipts less revenue, as distinguished from capital expenditure, serves to circumscribe the interpretation by the Courts of the particular rules. In Dublin Corporation *v.* McAdam (1887) 36 W.R. 98 and Harris *v.* Corporation of Irvine (1900) 37 S.L.R. 799, income tax was held to be claimable in respect of operations outside a certain area but within that area the conditions of supply were not with a view to profit and no charge could be made in respect thereof. In Portobello Town Council *v.* Sulley (1890) 27 S.L.R. 863, the whole of the profits (*i.e.*, gross receipts less expenses of earning them) were held assessable without deducting interest. Examples of deductions refused on the ground that they constituted diminution of capital employed or loss sustained within Section 209 (2) occur under Schedule D. The economic principle that profits of a venture are what remain after the reimbursement of or allowance of the capital invested and such interest thereon as could be obtained without incurring the mercantile risk is foreign to the income tax basis. The question there is what has been earned with the capital invested and capital expenditure incurred from time to time, deducting the revenue expenditure. The principle that capital expenditure is not to be deducted in arriving at profits under Schedule A. No. III. results from Rule 8 of the Rules applicable to No. III. which applies to assessments made under No. III. Schedule A., as above

stated, the rules applicable to Schedule D., so far as consistent with Schedule A., the actual rule in Schedule D. is Rule 3 of the Rules applicable to Cases I. and II. of Schedule D. and the matter is dealt with under that Schedule. Addie *v.* Solicitor of Inland Revenue (1875) 12 S.L.R. 282 (paging wrong, it is misprinted 274 in report) where cost of sinking pits and depreciation of buildings and machinery (which were "just part of the pit") were disallowed, is an example of the application of the rule to hereditaments charged under No. III. of Schedule A. in accordance with the rules of Schedule A. and, as far as consistent therewith, of Schedule D. So Highland Railway Company *v.* Balderston (1889) 26 S.L.R. 657, where sums expended on improvement of the permanent way of one section to bring it up to the standard of the rest of the line and a sum representing the cost of extra weight in relaying another portion of the line with steel in place of iron rails and with chairs of additional weight were disallowed. In the books of the Company these sums had been charged against capital, a circumstance which the Court treated as not without weight, though not conclusive. The Court regarded the expenditure as on the same footing as the cost of taking over the line, mainly it was a sum expended to make up the part of the line bought, which was inferior to the rest of that line, an improvement of *corpus* and not mere maintenance. And their Lordships pointed out the anomaly which would result if by the Railway charging these sums against capital, they were able to pay a larger dividend than by charging them against revenue, and yet for the purpose of paying tax were allowed to treat expenditure as revenue expenditure and so show as profits for tax a smaller amount than dividends plus the income tax deductible.

The following decisions have reference to terms used in rules 1, 2 and 3 of No. III.

Rule 1 : " Quarries " extend to a slate quarry whence slate is gotten by underground workings—such a quarry would not be a mine under Rule 2 of No. III. Jones *v.* Cwmmorthin Slate Company (1879) 5 Ex. Div. 93, the " other mines " in Rule 2 are those *ejusdem generis* with coal, tin, lead, copper, mundic and iron.

Rule 3 : " Inland Navigations," see Humber Conservancy Board *v.* Bater (1914) 3 K.B. 449.

" Docks " : Mersey Docks and Harbour Board *v.* Lucas (1883) 8 App. Cas. 891.

" Drains " : Ystradyfodwg, etc., Board *v.* Bensted (1907) A.C. 264.

" Tolls " : A.G. *v.* Black (1871) L.R. 6 Ex. 308. Sowrey *v.* King's Lynn Commissioners (1887) 3 T.L.R. 516.

" Other concerns of the like nature," *e.g.*, slaughter houses and cemeteries if carried on as " concerns," *i.e.*, profit making. Adam *v.* Maughan (1889) 27 S.L.R. 64, Harris *v.* Edinburgh Corporation (1907) 44 S.L.R. 873, Edinburgh Southern Cemetery Co. *v.* Kinmont (1889) 27 S.L.R. 71.

EXEMPTIONS FROM DUTY UNDER SCHEDULE A.

S. 37 (1) (*a*)—rents and profits of any lands, tenements, or hereditaments belonging to any hospital public school or almshouse or vested in trustees for charitable purposes so far as the same are applied to charitable purposes only (provided that any assessment on the respective properties shall not be vacated or altered but shall be in force and levied notwithstanding the allowance of any such exemption). As to the

meaning of hospital, public school or almshouse, see *infra* pp.

In Maughan *v.* Free Church of Scotland (1893) 30 S.L.R. 666, a Free Church Assembly Hall held by trustees and used to hold meetings in for religious and semi-religious purposes and therefore "vested in trustees for charitable purposes," but producing neither rents nor profits, was for that reason held not entitled to the exemption in favour of "*rents and profits* of lands, etc., vested in trustees for charitable purposes *so far as the same are applied to charitable purposes.*" "Charitable purposes" means purposes which are "charitable" according to the well-established meaning of the term "charity" in Equity. Commissioners for Special Purposes of Income Tax *v.* Pemsel (1891) A.C. 531. "Charity" is not used in its eleemosynary sense, it denotes the promotion of objects of public utility, those enumerated in the famous Statute 43 Eliz. c. 4 (now repealed by 51 and 52 Vict. c. 42 S. 13) and those analogous thereto. And the decisions as to what constitutes a charity in equity, for the purpose of the special doctrines applicable to charity in equity, are consequently authorities on what constitute "charitable purposes" under the Income Tax provisions.

The non-liability to tax of property occupied by the Crown results, not of course from exemption, but from the principle that the Crown is not bound by a Statute unless expressly referred to and charged. Coomber *v.* Berks JJ. (1883) 9 App. Cas. 61, the leading case, Bent *v.* Roberts (1877) 3 Ex. Div. 66, Adam *v.* Maughan (1889) 27 S.L.R. 64, Brown *v.* Smith (1901) 39 S.L.R. 20, are authorities on this point and since Lord Watson in Coomber *v.* Berks JJ. (*ubi supra*) stated the rating cases were in point, Ryde on Rating will give other examples. The difficulty is not in the principle but in

determining whether on the facts as to user the occupation is substantially occupation for the purposes of the Crown : in Adam *v.* Maughan liability was allowed as to the portions of the premises used for ordinary purposes of Municipal Administration and disallowed as to that part occupied as a Burgh Court room—" part of the Queen's establishment for the administration of Justice." In Brown *v.* Smith (*ubi supra*) the County Hall "was built, and used primarily and usually, for performance of County business and only exceptionally and accidentally for the purpose of a Court of Justice" ; it could not, therefore, be regarded as part of the King's Establishment for the administration of Justice : for similar reasons the rooms occupied by the Town Clerk and procurator fiscal could not be regarded as forming part of that Establishment, but the case might have been different if the rooms occupied by the procurator fiscal had been part of or adjuncts of a Court of Justice or Gaol.

In Needham *v.* Bowers (1888) 21 Q.B.D. 436 the inhabited house duty cases were said to rest on the same principle as the income tax cases. See Musgrave *v.* Dundee Royal Lunatic Asylum (1895) 32 S.L.R. 579 (inhabited house duty).

S. 38—The trustees of the British Museum in repect of lands and tenements vested in them.

S. 39—(1) An unregistered friendly society whose income does not exceed £160. A registered friendly society precluded by Act of Parliament or by its rules from assuring to any person a gross sum exceeding £300 or an annuity exceeding £52.

(2) A registered trade union precluded by Act of Parliament or its rules from assuring to any person a gross sum exceeding £300 or an annuity exceeding £52 is to be entitled to exemption from tax under this

Schedule "in respect of its interest and dividends" which are applicable and applied solely for the purpose of provident benefits—as defined by the Section.

(5) and (6) National Insurance Exemptions—these are in terms capable of applying to Schedule A.

S. 40.—Claims under Ss. 37, 38 and 39 to be made to Special Commissioners in prescribed form but claims under S. 38 or 39 (1) may be made, as to tax under Schedule A., to General Commissioners.

S. 41.—Must be made within three years after end of year of assessment to which the claim relates.

DEDUCTIONS AND ALLOWANCES.

The rules as to these will be found in No. V. and No. VI. (It must be remembered that under No. I. the starting point is annual value; under No. II. the starting point is profit but not trading profit: under No. III. the starting point is trading profits, so that (save so far as the Act or rules prohibit) the figure to tax is gross receipts, less expense of earning them; and as to No. III. the principles are expounded under Schedule D. since the rules of Schedule D. for that purpose apply.)

No. V.—Rules in Respect of Deductions and Allowances.

Allowed Deductions.

Rule 1.—(*a*) Tenths, first fruits, duties and fees on presentations paid by any ecclesiastical person in year preceding year of assessment.

(*b*) Average of payments during seven years preceding year of assessment for procurations or synodals by ecclesiastical persons.

(*c*) Expenditure during year preceding on repairs of collegiate churches, chapels, chancels, etc., by ecclesiastical body or person bound to repair.

(*d*) Parochial rates and taxes in respect of tithe rent charge under Tithe Act, 1836, for year of assessment—deduction inapplicable where owner of tithe rent charge assessed to tax under Rule 7 of No. VII. of Schedule A.

(*e*) Any unredeemed land tax.

(*f*) Public rates for draining, fencing, or embanking lands.

(*g*) Average annual expenditure (taken over 21 years) by landlord in making or repairing sea walls or embankments against tidal river—though not charged on lands by public rate or assessment.

Under (*g*) note Hesketh *v.* Bray (1888) 21 Q.B.D. 441, deduction not claimable where the embankment has been constructed to reclaim salt marshes and make them valuable land, the reclamation was not of land being eroded by action of the sea and the embankment was not "necessary for the preservation or protection of such lands against the encroachment or overflowing of the sea," etc., the words contemplate protection or preservation of land in its existing state. *Sed qy.* "overflowing."

Provided that this rule shall not apply within the administrative County of London so far as respects the deduction allowed by the Valuation (Metropolis) Act, 1869 :—

> "The percentage or rate of deductions to be made from the gross value in calculating the rateable value for the purposes of this Act shall not exceed the amounts in the third schedule to this Act, so far as the same are applicable."

RULE 2. The above allowances (unless payments made by tenant) to be made from assessment on the roperty concerned save as hereinafter provided.

RULE 3. Allowances under Rule 1 (*a*) (*b*) and (*c*) of No. V. to be made by deduction or repayment but allowance for charges on tithe rent charge by repayment only.

RULE 4.—(Scotland only).

RULE 5.—If foregoing allowances have not been made by deduction or abatement from assessment and are claimable by repayment—claim may be made within three years after year of assessment and before General Commissioners of division where property situate.

RULE 6.—General Commissioners to certify amount and Special Commissioners to order repayment.

RULE 7.—(1) Where tax is charged on annual value (not estimated by reference to profits) following provisions to have effect :—

(*a*) Assessment on lands (including farmhouse and other buildings) to be reduced for purpose of collection by one-eighth.

(*b*) Assessment on any house or building (except farmhouse or building included with lands in assessment)—reduce assessment for purposes of collection.

(i) By one-sixth of assessment where owner is occupier or chargeable as landlord or where tenant is occupier and landlord undertook to bear cost of repairs.

(ii) When tenant is occupier and undertook to bear cost of repairs by such sum not exceeding one-sixth of assessment as will reduce assessment for purpose of collection to amount of rent payable by him.

(2) Where amount of assessment in case of lands (with farmhouse and buildings) is more than one-eighth below the rent and in case of any house and building (except a farmhouse or building assessed with lands) more than one-sixth below the rent after deducting from such rent any deductible outgoing this rule is not to apply.

Rule 8.—(1) If the owner of land or houses to which this rule applies shows the cost to him of maintenance, repairs, insurance and management (averaged over preceding five years) has exceeded in case of land one-eighth of annual value as adopted under this schedule and in case of houses one-sixth part of that value he shall be entitled in addition to any reduction of the assessment for the purpose of collection to claim and obtain repayment of tax on excess.

(2) Maintenance (for the purpose of this rule) includes replacement needed to maintain existing rent.

(3) This rule to apply to any land (inclusive of farm houses and other buildings) assessment on which is reduced for purpose of collection and to any house annual value of which, as adopted under this Schedule, does not exceed £12 and the assessment on which is so reduced.

(4) In comparing, for the purpose of this rule, cost of maintenance, repairs, insurance and management of land or houses with their annual value, the total cost of maintenance, etc., of land managed as one estate, or of any houses on any such land, is to be compared with total annual value of such land or houses.

(5) Claims for repayment under this rule to be governed as to method and proof by the general provisions of the Act as to claims for exemption, abatement or relief. Declaration as to cost of maintenance may be made by owner and delivered to Surveyor of any district in

which land, etc., situate and if satisfactory to Surveyor, he is to certify and repayment to be made.

(6) In computing the five-year average for the purposes of this rule the year to end 31st March or such other date as owner adopts with Surveyor's consent, and the five preceding years are to be those preceding the year for which tax is assessed the repayment of which is claimed.

RULE 9.—(1) Where land has been demised at a rent, without fine or other benefit, and loss is sustained on growing crops or stock or the lands or any part of them have been rendered incapable of cultivation for any year by flood or tempest, and the rent has been abated by owner in consequence, General Commissioners may make abatement for that year of assessment, proportionate to the abatement of rent and discharge tax *pro tanto*.

(2) Where any such loss is sustained on lands in owner's occupation, Commissioners may make like abatement and discharge of tax under this Schedule as if the land had been demised and the owner had made a proper abatement.

RULES 10 and 11.—Penalties for making false claim for abatement under this rule or for fraud in making such claim, etc., and on aiders and abettors.

No. VI.—Rules in Respect of Further Allowances.

1.—(*a*) Amount of tax charged on any College or Hall in any University of United Kingdom in respect of public buildings or offices belonging to the College or Hall, so far as not occupied by any individual member thereof, or any one paying rent therefor.

As to what constitutes a college or hall in any university of the United Kingdom, see Rex *v.* Special

Commissioners of Income Tax *ex parte* University College of North Wales (1909) 100 L.T. 585, Rex *v.* Special Commissioners of Income Tax *ex parte* Essex Hall (1911) 2 K.B. 434.

(*b*) Amount spent on repairs of the public buildings and offices of any such college or hall and of gardens, walks and grounds for recreation kept up out of College funds.

(*c*) The tax charged on any hospital, public school or almshouse in respect of the public buildings, offices and premises belonging thereto and so far as not occupied by any individual officers, or the master thereof, whose total annual income from all sources is £150 or more, or by a person paying rent therefor. "Hospital"—see on the meaning of this term Needham *v.* Bowers (1888) 21 Q.B.D. 436, Cawse *v.* Nottingham Lunatic Hospital (1891) 1 Q.B. 585 if the institution is maintained by fees it is not within the provision, if *mainly* by voluntary contributions it is. "Public School"—see Blake *v.* Mayor of London (1886) 18 Q.B.D. 437 and Bain *v.* Free Church of Scotland (1897) 34 S.L.R. 351—the term is used in the ordinary sense and does not extend to a theological college for young men largely graduates at some University. Schools founded with a public object, maintained in part on endowments and governed by persons nominated therefor in the public interest as distinguished from schools, having none of these marks, but managed with a view to private profit of the proprietor, are intended. Ackworth School General Committee *v.* Betts (1916) 113 L.T. 855. "Almshouse"—see Mary Clark Home Trustees *v.* Anderson (1904) 2 K.B. 645.

The allowance is, it will be noticed, only in respect of the tax on the premises so far as those premises are not occupied by a tenant at a rent or by some officer whose

total income is £150 or more. See *e.g.*, Bray *v.* Lancashire JJ. (1889) 22 Q.B.D. 484.

(*d*) Amount spent on repairs to hospital, public school, or almshouse and grounds, etc., out of their funds.

(*e*) The amount of the tax on any building belonging to any literary or scientific institution, used solely for its purposes, in which no payment for instruction is made and so far as not occupied by institution's officer or person paying rent therefor.

It will be seen the exemption does not apply to literary or scientific institutions simply, but only under specified conditions, buildings owned by and used *solely* for their purposes, and the instruction must be gratuitous: further, the exemption does not apply to any part occupied by an officer of the institution or person paying rent therefor. In Sulley *v.* Royal College of Surgeons, Edinburgh (1892) 29 S.L.R. 620, the Royal College of Surgeons, Edinburgh, was held not to be a "scientific institution" because its main objects were professional, so Inland Revenue *v.* Juridical Society of Edinburgh (1914) 51 S.L.R. 643. Decisions under a different Statute, with a considerable difference in language, are Society of Writers to the Signet *v.* Commissioners of Inland Revenue (1886) 24 S.L.R. 27, Commissioners of Inland Revenue *v.* Forrest (1890) 15 App. Cas. 334, in *re* Royal College of Surgeons of England (1899) 1 Q.B. 871. As to what is a literary institution the Manchester Free Public Libraries owned by the Corporation and maintained under the Public Libraries Acts were held to be within this exemption, Manchester Corporation *v.* McAdam (1896) A.C. 500, while in Musgrave *v.* Magistrates, etc., of Dundee (1897) 34 S.L.R. 702, the claim failed only because the free library buildings were not used "*solely for the purposes*" of such library—one room being used for a subscription library, the arrangement

being that for the use of the room the subscription library's books, after a year's circulation, became the property of the free library: the librarian and clerk of the free library acting as librarian to the subscription library.

2. The allowances made under No. VI. are to be granted by the General Commissioners for the division.

No. VII.—Rules as to Persons Chargeable.

1. The occupier "for the time being" is to be charged and to pay, save where otherwise provided in any particular case. (See Rule 3 later.)

2. Every person having the use of any lands or tenements shall be deemed the occupier thereof. See Ystradyfodwg, etc., Board *v.* Bensted (1907) A.C. 264 for dicta on this provision.

3. Tax on each assessment is to be levied on the occupier for the time being without any new assessment, notwithstanding any change of occupation.

Provided that:—

(*a*) An occupier quitting is to be liable for tax payable in respect of the period up to date of his quitting so far as the tax falls to be ultimately borne by him.

(*b*) Nothing in the Act is to authorise levying on an occupier for the time being any tax under Schedule A. which ought to have been levied upon and ultimately borne by any former occupier of the lands and nothing therein is to affect any remedy under the Act for levying such tax from such former occupier.

4. Tax is to be charged on lands, etc., irrespective of occupation at time of assessment but if any house is or becomes unoccupied for the whole or part of the year

of assessment the tax is not to be levied for the unoccupied period and the General Commissioners on proof are to discharge the tax for that period.

5. If after assessment lands are divided into two or more distinct occupations the General Commissioners, on application of the persons interested, are to apportion the tax assessed and the apportioned amount is to be collected and levied as an original assessment.

6. In respect of any compositions, rents, or other payments in lieu of tithes, the Commissioners may, if they think fit :—

(*a*) Charge occupiers of lands whence tithes arise;

(*b*) Charge the person liable to make such payments ; and

(*c*) Direct notices to any such persons requiring returns from them and then the provisions and penalties apply as in the case of statements of value of lands.

(Does not apply in Administrative County of London.)

7. (1) Where lands, etc., are subject to tithe rent charge and the owner of the tithe rent charge makes a return for the purpose of assessment being made on him the Commissioners may if they think fit charge him under this Schedule in respect of the rent charge deducting therefrom the public local rates, taxes and assessments charged thereon in the preceding year. See above at p. 26, citing Stevens *v.* Bishop.

(2) Where any such charge is made upon the owner of the rent charge the amount of the rent charge shall be allowed as a deduction from the annual value in assessing the lands, etc., whereon it is charged. (This rule does not apply within the Administrative County of London.)

8. Landlord to be assessed and charged in respect of :—

(*a*) Dwelling house, buildings and offices be-

longing thereto, occupied by tenant, which, with land occupied therewith, is under £10 annual value.

(*b*) Lands, etc., let for period of less than a year.

(*c*) House or building let in different apartments or tenements and occupied by two or more persons severally,—any such building to be assessed as one entire tenement.

But tax in each of these cases leviable on occupier or occupiers in default of payment by landlord.

9. Landlord or immediate lessor of lands, houses, or buildings may, if the General Commissioners think fit, be charged as if he were occupier for any year of assessment on request in writing and until he cancel that request by notice in writing: request to be delivered or sent by post to clerk to General Commissioners on or before 31st July in year for which it is first to take effect: tax so charged to be recoverable from him like any other income tax without prejudice to right to distrain on premises as if occupier has been assessed.

10. Tax to be charged in respect of any house or tenement occupied by the accredited minister of any foreign State to be charged on and paid by landlord or person immediately entitled to the rent (if owned and occupied by such minister presumably there is no legal remedy).

11. Tax to be charged in respect of any house, tenement or apartment belonging to the Crown in the occupation of any officer of the Crown by right of his office, or otherwise (except apartments in Royal palaces) to be charged on and paid by the occupier on the annual value.

12. Where a house is divided into distinct properties and occupied by distinct owners or their respective tenants, such properties are to be separately assessed and charged on the respective occupiers thereof.

13. (1) Mortgagee in possession of lands or tenements and in actual occupation to be assessed and charged as occupier and if not in actual occupation to be liable to the like deduction as any landlord.

(2) In any settlement of accounts between such mortgagee and the mortgagor, tax payable on interest due in respect of the mortgage is to be allowed as money received on account of interest.

No. VIII.—Rules as to the Right of Persons by whom Tax is paid to Recoupment in certain cases.

As between Landlord and Tenant.

(1) Tenant occupier of lands, tenements, hereditaments or heritages *who pays the tax* shall be entitled to deduct and retain in respect of the rent payable to the *landlord for the time being* (all sums allowed by the Commissioners being first deducted) an amount representing the *rate in force during the period the rent was accruing due* for every 20s. thereof, the said deduction to be made out of the *first payment thereafter made on account of rent* and any receiver on behalf of the Crown or other person receiving the rent shall allow the deduction *on receipt of the residue of the rent.* But the tenant or occupier shall not deduct more than the tax charged in respect of the property and actually paid by him.

(2) A tenant who pays the tax shall be *acquitted and discharged* of so much money as the deduction allowed represents as if that sum had been actually paid as rent. These two rules refer to "tenant occupier," "tenant or occupier" and "tenant." Section 40 of Income Tax Act, 1853, gave a right to deduct to every person who should be liable for payment of rent. No right exists until the tax is *paid*, the mere liability to pay and have payment

enforced by process does not entitle the tenant to claim deduction at *nisi prius* when sued for rent due. Tinckler *v.* Prentice (1812) 4 Taunt. 549, Baker *v.* Davis (1813) 3 Camp. 474 : on the other hand, though the rule speaks of the deduction to be made "out of first *payment* thereafter" of rent and later "on receipt of the residue of the rent," it is clear that if the tax is paid that is *pro tanto* a discharge of the rent and can be set up as an answer either to an action for the whole rent accrued or to distress therefor, Tinckler *v.* Prentice (*ubi supra*), Graham *v.* Tate (1813) 1 M. and S. 609, and the deduction may be made out of the next payment even if that is levied under process of Court, Franklin *v.* Carter (1845) 1 C.B. 750. So in *re* Sturmey Motors Lim. (1913) 1 Ch. 16, a receiver, appointed in a debenture holders' action against a Company, gave an undertaking to the lessor, who threatened to distrain for arrears of rent, to pay "the arrears of rent then owing" by the Company. At that time no rent had been paid for four years but the Company had paid income tax for those four years under Schedule A. in respect of the premises leased. Warrington J. held that since the lessor could only distrain for the balance (rent less tax paid) the undertaking should be read as referring to the amount for which alone distress could have been levied.

Where an assign of a term had been assessed as occupier of the lands leased and, after assigning over the term and paying rent then due, paid proportion of tax due from him up to the date of assignment and handed the receipt for this tax to the assignee as part of the settlement of account between them, it was held that the succeeding occupier when making his next payment of rent might deduct the amount so paid for tax by his assignor, Clennel *v.* Read (1816) 7 Taunt. 50. When a tenant is assessed but the landlord could have obtained

exemption and claimed it before payment of tax by tenant but did not establish his exemption until after the tenant had paid the tax, which was rightly assessed at the time and exigible when paid, it was held the tenant had a right of deduction of the sum so paid when paying rent to his landlord. Swatman *v.* Ambler (1854) 8 Ex. 72. The provision applies to all landlords, mediate and immediate. A. is sub-lessee and as occupier is assessed to income tax, he pays and deducts from his immediate lessor B.; the immediate lessor B. has to pay a rent to the head lessor C.; A. deducts tax paid to the extent of the rate for every 20s. of A's. rent receivable by B., and B. again recoups himself by paying C. the amount of rent receivable by C., less the rate of tax for every 20s. of that rent; the practical effect is that B. and C. bear the tax, but B. only bears ultimately as much as the rent payable to him exceeds the rent payable by him to C. The landlord is bound to allow the deduction, notwithstanding the tenant refuses to show him the collector's receipt for payment of the tax. North London and General Property Co. *v.* Moy Lim. (1918) 2 K.B. 139. Whether if the rent is paid in full out of which deduction could have been claimed the tenant, who has failed to exercise his statutory right of deduction, has a remedy to recover the tax so paid is a question which must depend on the general law applicable to the right to recover. If the payment is made here presumably the right if any of recovery is governed by English law and though the tax is in substance the landlord's tax it is in general enforceable only against the occupier and he would have no right of action: none for the tax and none for rent overpaid by reason of non-deduction. In Denby *v.* Moore (1817) 1 B. and Ald. 123, where payment without deduction of tax had lasted 12 years it was held the amount which might have been

deducted could not be recovered. In general, such payments are deemed voluntary and irrecoverable, Cumming *v.* Bedborough (1846) 15 M. and W. 438. On the other hand, in Agnew *v.* Ferguson (1903) 40 S.L.R. 636 (in Scotland) recovery was allowed. There the tenant had paid income tax on royalties and had then paid these royalties in full to the landlord without deduction of such tax (which he was entitled to make), but it appeared he had done so following a previous practice during his tenancy of paying in full, the landlord subsequently repaying the tenant the proportion of tax which he might have deducted. In these circumstances the *condictio indebiti* in Scots law (which following Roman law is a remedy against unjust enrichment of one person at the expense of another) would lie (for another case see Oswald *v.* Magistrates of Kirkcaldy (1918) 56 S.L.R. 97). If an action lies at all it is not given by the Income Tax provisions and whether it will lie or not depends on the general law of recovery of money paid or overpaid and that law in England and Scotland is not the same. There might, however, be special circumstances under which an action would lie even in England. Further, the main difficulty which has been felt by the English Courts is that the "complexity of the Income Tax provisions" does not admit of the statement that the tax of one man has been levied on another; this seems, with great respect, to be somewhat weak and there are undoubtedly cases in which that could clearly be shown, *e.g.*, an assessment made under Schedule A. on the landlord pursuant to Rules No. VII. (Schedule A.) Rule 8, and levied on the occupier in default of payment by the landlord. And in all cases it is submitted the whole scheme of the Act, "taxation at source," shows that to be the substance of the matter. If the tax is paid and the statutory deduction made on payment of the balance,

what is the "rent paid," *i.e.*, does the deducted tax operate *pro tanto* as payment of rent? The language of Rule 2 is that the tenant shall be *acquitted and discharged* of as much money as is represented by the deduction as if that sum had been actually paid as rent and in Duke of Beaufort *v.* Commissioners of Inland Revenue (1913) 3 K.B. 48, it was held that the sum deducted for tax was not "rent paid." With these provisions must be read Rule 23 of the General Rules applicable to Schedules A., B., C., D., and E., Rule 23 (1) A person who refuses to allow a deduction of tax authorized by the Act to be made out of any payment shall forfeit the sum of £50. (2) Every agreement for payment of interest, rent, or other annual payment, in full without allowing any such deduction shall be void. But an agreement to pay such (variable) rent as after deduction thereout of income tax, pursuant to the statutory provisions, will leave a clear yearly sum of £*x* payable to the landlord is good and £*x* recoverable, Davies *v.* Fitton (1842) 2 Dr. and War. 225, so in Colbron *v.* Travers (1862) 12 C.B. (N.S.) 181 and Beadel *v.* Pitt (1865) 11 L.T.N.S. 592 : any increase or reduction of rent contingent on increase or reduction of tax is allowable—the Act does not interfere with any arrangement as to quantum of rent payable that might be made independently of it, but on that quantum, whatever it is, the provisions of the Act must operate—payment of tax is *pro tanto* a discharge of such rent. And an agreement that if the tenant pay the rent in full without deduction of tax the landlord will repay him the amount he might have deducted is good and the amount recoverable by action, Lamb *v.* Brewster (1879) 4 Q.B.D. 607.

Reverting to Schedule A. No. VIII. "Rules as to the right of persons by whom tax is paid to recoupment in certain cases" : By Rule 7 a tenant occupier for the

time being of any lands, tenements, or hereditaments, who has been required to pay and has paid sums charged in respect thereof under this Schedule, which under the Act ought to have been or ought to be paid by a former tenant or occupier may deduct and retain out of *any* subsequent payment of rent to his landlord the sum or any part thereof which ought to have been or ought to be so paid. By Rule 8, where under Rule 8 of No. VII. (*a*) and (*b*) (dwelling house in occupation of tenant of less than £10 annual value—lands let for less than a year) in each of which cases the landlord is to be assessed with a remedy, in default of payment by the landlord, against the occupier, if the tax is levied on the occupier it may be deducted *out of the next payment of rent.*

By Rule 9, when under Rule 8 of No. VII. (*c*) (building let in different tenements and occupied by two or more persons severally, in which case the landlord is to be assessed with a remedy in default of payment against the respective occupiers), the tax is levied on the occupier or occupiers, tax may be deducted *out of any subsequent payment on account of rent.*

By Rule 10. If for the purpose of avoiding distraint on any premises or property under paragraph 3 of Rule 9 of No. VII. (which allows the Commissioners if they think fit on request in writing from landlord or immediate lessor of any lands, houses or buildings to assess him instead of the occupier without prejudice to the right to recover the tax so assessed, if necessary, by distraint on the premises as if the assessment had been made on the occupier), if the occupier pays the tax, the amount thereof may be deducted out of *the next or any subsequent payment on account of rent.* And see s. 211 (2).

Cases other than those as between landlord and tenant.

By No. VIII. Rule 3, an occupier of lands charged on the amount of any composition, rent or payment for tithes arising therefrom who pays the tax shall on payment be entitled to deduct from the composition, rent or payment for tithes in the same way as the tenant may deduct from rent under Rule 1, viz.: —the rate of tax in force during the period through which the composition, etc., for tithes was accruing due for every 20s. of that composition out of the first payment thereafter made, but his deduction must not exceed the tax charged and actually paid by him.

By Rule 4, where any lands, tenements, hereditaments or heritages are subject to an annual sum (which is defined as any yearly interest, annuity, rent, rent charge (whether under the Tithe Act, 1836, or otherwise) fee farm rent, rent service, quit rent, feu duty, teind duty, stipend to a licensed curate or other annual payment, reserved or charged upon any lands, tenements, hereditaments or heritages) whether payable half yearly or at any shorter or more distant period a landlord owner or proprietor who has been charged to tax under Schedule A. or from whom tax is deductible under this rule or Rule 1 or Rule 3, shall be entitled on making such payment (*i.e.*, of the annual sum) to deduct and retain the rate of tax in force during the period the annual payment in question was accruing due for every 20s. thereof (the just proportion of any sums allowed by the Commissioners being first deducted) and Receivers on behalf of the Crown and others are to allow the deduction. A. is landlord, B. tenant and C. has a fee farm rent, B. is assessed to income tax pays tax, then pays rent, deducting therefrom tax paid. A. then pays the fee farm rent and "passes on the burden" of the income tax *pro tanto* to the owner of the fee farm rent. In effect for convenience the Crown takes the tax from the occupier but

the tax is in truth shared ultimately between the landlord and the owner of the fee farm rent. The rule there limits the right of deduction where any "such person" is also a tenant or occupier of the lands, etc., to the tax charged and actually paid and by Rule 5 the person who pays the balance is discharged from the amount authorized to be and in fact deducted.

Rule 6 contains similar provisions in relation to advances of public money to promote improvement of lands statutorily secured by a rent charge thereon—the rent charge is part in repayment of principal and in part secures interest and the right of deduction is limited to the tax on one third.

By Rule 11 as between the owner and a mortgagee of his property or any person entitled to a charge thereon or to any annual sum thereout the owner's right of deduction under these rules is not to be affected by any relief afforded by Rule 7 of No. V.

It is necessary to point out that under Rules 4 and 5 of No. VIII. of Schedule A. and Rule 23 (1) and (2) quoted above and Rules 19 and 21 of General Rules (all Schedules) referred to later after Schedule E. more than one question arises. Some propositions are clear on the cases others less certain. Rule 23 (2) of the General Rules merely avoids "agreements" (cf. Section 73 of the Income Tax Act, 1842), but Rule 23 (1) is of wider scope and so are Rules 4 and 5 of No. VIII. Schedule A. and Rule 19 of General Rules all Schedules. And those provisions require statutorily authorized deductions to be allowed under penalty and provide that when A., who is liable to pay rent, annual interest, or rent charge to B., is assessed to tax which he is authorized to deduct as against B., any tax so paid is *pro tanto* a discharge of the rent, annual interest, or rent charge. If then the rent, etc., is of fixed amount and not on the Davies *v.* Fitton

(*ubi supra*) principle, a payment fluctuating with rise or fall of tax, so as to leave a clear fixed sum after payment and deduction of that tax pursuant to the Statute, it is difficult to see how it can make any difference whether that fixed sum is payable under a contract or covenant or under a Will or a limitation or trust. It is of course clear that a Will is not within Rule 23 (2) General Rules all Schedules, and *limitations* of a marriage or other settlement or *trusts* in a separation or other deed (as distinguished from covenants) appear equally outside that rule. Covenants on the other hand in a marriage settlement or separation deed are clearly within it. And, notwithstanding expressions to the contrary in the decisions, it does not seem to make any difference in the legal position whether all the provisions including Rule 23 (2), or all the provisions except Rule 23 (2), apply. If there is a payment of fixed (as distinguished from variable) amount, that payment is by force of the Statute discharged by payment of tax to the Crown and discharge of the balance to the creditor, how then can the debtor be made liable to pay a sum from which he is discharged? If, however, the gift, contract, trust, or limitation, in whatever document contained, can be construed as entitling the creditor to a varying sum of such amount as will leave, after deduction of income tax as allowed by statute, a clear yearly specified sum, the creditor will get the clear sum of unvarying amount but he will get it because such a provision is perfectly valid and allows the statutory provisions as to deduction to operate upon it. It is on this ground that A. G. *v.* Shield (1858) 28 L. J. Ex. 49 is to be supported. The Court rejected the construction of the clause contended for (that the payment was to expand or contract with the tax and leave a clear sum) and held that, so construing the clause, the penalty for refusal to allow deduction from

a fixed annual payment (rent charge) was incurred. On the other hand, Lord Lovat *v.* Duchess of Leeds (1862) 2 Dr. *v.* Sm. 62 and Festing *v.* Taylor (1862) 3 B. and S. 217, notwithstanding expressions in the judgments, really rest on the footing that properly interpreted the intention in both of those cases was to give or reserve a varying amount such as after statutory deduction of income tax would leave an annual sum of unvarying amount. See also Brooke *v.* Price (1917) A.C. 115 and In *re* Shaw (1918) P. 47. And whether there is one such provision only or the instrument is treated as containing an obligation to pay a fixed amount and also to raise and pay in addition any sums deducted for tax from the fixed amount is a question of machinery—which may affect persons who claim property taken subject to one only of the provisions see Lovat *v.* Duchess of Leeds (*ubi supra*), Festing *v.* Taylor (*ubi supra*) and Floyer *v.* Banks (1863) 3 De G. J. and S. 306. (In Lovat *v.* Duchess of Leeds, Erle C. J. said "the devise produces the same effect as a grant of a separate annuity of sufficient amount to repay from time to time the amount of income tax to the Duchess.") In construing a Will for the purpose of ascertaining the testator's intention, the prime principle is that income tax is not a "deduction," it is a payment made on account of the annuitant (Ashton Gas Co. *v.* A.G. (1906) A.C. 10). On the other hand the testator may "tell you he understands the word deductions to include income tax and it must be taken to include it" (Lindley L. J. in *re* Buckle (1894) 1 Ch. 286). In other words the context may show that the annuity is clear of income tax and there are many authorities on the particular language of wills as to whether in virtue of the context the annuitant takes an annuity clear of, or subject to, payment of income tax. In Wall *v.* Wall (1847) 15 Sim. 513, Lethbridge *v.* Thurlow (1851) 15 Beav.

334, Abadam *v.* Abadam (1864) 33 L.J. Ch. 593, *re* Buckle (*ubi supra*), Gleadow *v.* Leetham (1882) 22 Ch. D. 269, and the very recent case of In *re* Loveless (1918) 2 Ch. 1, there were decisions that the annuity was not *clear* of tax. Cases the other way are Turner *v.* Mullineux (1861) 1 J. & H. 334, Mackie's Trustees *v.* Mackie (1875) 2 Ct. Sess. Cas. 4th Series 312, Bannerman *v.* Young (1882) 21 Ch. D. 105. On the question of a Covenant in a separation deed, see the recent case of Blount *v.* Blount (1916) 1 K.B. 230 and cases therein referred to. Observations of Lord Gifford in Kinloch's Trustees *v.* Kinloch (1880) 7 Ct. Sess. Cas. 4th Series 596 are in point on the general question.

No. IX.—Rules as to Place of Charge.

Rule I.—All properties to be assessed and charged in the parish where they are situate except as otherwise provided in the following rules :—

Number of Rule.	Subject Matter of Assessment.	Place of Charge.
Rule 2	Profits from canals, inland navigations, streams of water, drains or levels, railways or other roads or ways of a public nature and belonging to or vested in any company of proprietors or trustees, corporate or not corporate, may be included in one statement and assessed and charged in.	Parish in which the general accounts of the concern are usually made up.
Rule 3	Profits of manor or royalty extending into different parishes may be included in one statement and assessed and charged in.	Parish where court of manor or royalty usually held.
Rule 4	Profits of all fines received by the same person may be included in one statement.	Parish where that person resides, or if a body of persons where that body has its head office.

Number of Rule.	Subject Matter of Assessment.	Place of Charge.
Rule 5	All lands, occupier (whether owner, tenant, tenant under different owners), must return a statement in each parish in which any part of the lands is situate though he may not reside there and give a separate estimate of lands in his occupation belonging to different owners, treble tax for lands omitted in addition to any other penalty.	
Rule 6	Lands held under same demise or occupied by same person as owner situate within different parishes but within same division.	"Either" (*i.e.*, any) parish (if Commissioners are satisfied proportion in each parish of quantity, rent, or value cannot be ascertained).
Rule 7	Within different divisions.	Division where occupier resides (*i.e.*, failing assessment by parishes for above reason).
Rule 8	Dwelling house or premises occupied therewith situate in two or more parishes.	Such one of those parishes as surveyor deems most expedient.
Rule 9	Mine situate or its produce manufactured in parish other than that in which its produce sold.	Parish and division in which mine situate or in which its produce is manufactured.

Rules 5, 6, and 7 do not apply within the Administrative County of London.

See for meaning of parish and body of persons, Section 237, p. 213.

SCHEDULE B.

The tax is "in respect of the occupation of all lands, tenements, hereditaments, and heritages in the United

Kingdom for every 20s. of the assessable value estimated according to the rules of this Schedule."

This wide statement does not show the scope of Schedule B.; that appears from the rules, rule 1 in effect limiting the charge to lands, etc., capable of occupation, excluding properties, whether capable of occupation or not, which fall within No. II. and No. III. of Schedule A., and then, by a proviso, excepting from the charge (*a*) any dwelling house, or the domestic offices thereto belonging, unless occupied, by virtue of one and the same demise, together with a farm of lands, or with a farm of tithes, for the purpose of farming the same; and (*b*) any warehouse or other building occupied for the purpose of carrying on a trade or profession. Shortly, therefore, it is a tax on occupation for farming whether by tenant, or owner, occupiers. Nurseries or market gardens (by Rule 8 below) are to be assessed on profits, estimated according to Schedule D., though the assessment, when so estimated, is made under Schedule B.; this involves averaging profits instead of, in effect, taking the double rent. Nurserymen and market gardeners therefore must pay on profits; occupiers *for the purpose of husbandry only* taxed under this Schedule have, on the other hand, the *option* to be assessed on profits under Schedule D., or on double annual value under Schedule B., but if they desire assessment under Schedule D. they must give notice early in the year of assessment (Rule 5 below), and any person occupying (as owner or tenant), for husbandry only, can instead of electing to be assessed on profits in the first instance under Schedule D. (*i.e.*, on average of three preceding years) get repayment at the end of the year if his profits *for the year of assessment* are less than double annual value (see Rule 6 below); hop gardens are not within the special

provisions as to nurseries and market gardens (Rule 8); and a person occupying woodlands can, under certain conditions (Rule 7), elect to be assessed under Schedule D. Occupation and occupier must be interpreted in the light of Rule 2 of No. VII., Schedule A., applied to this Schedule by Rule 4 of Schedule B. As to lands occupied only or mainly for husbandry the assessable value is twice the annual value; as to lands not so occupied the assessable value is single annual value, unless the Board of Agriculture and Fisheries, on reference to them by the Commissioners of Inland Revenue, certify that such use (not for husbandry) is unreasonable. The rules (as to ascertaining value—*infra*) do not apply to valuation of lands, etc., within the administrative County of London if those lands are included in the valuation list under the Valuation (Metropolis) Act, 1869, unless for income tax purposes they have to be separately valued and that valuation list contains no such separate value.

Tax under Schedule B. is to be charged in addition to tax under Schedule A.

The Rules of No. IV. of Schedule A. apply to estimation of annual value for Schedule B. also, subject to two modifications:—

(1) If the tenant has agreed to pay rates, taxes or assessments, which by law are payable by the landlord, the amount of these rates, etc., *bona fide* paid by the tenant in and for the year preceding the year of assessment are to be added to the rent (*i.e.* the rack rent ascertained in other respects as under Schedule A., see Schedule A., No. I.—General Rule).

(2) In case of a lease partly in consideration of improvements at the cost of the tenant, etc. (case in Rule 11. of No. IV. of Schedule A.) the annual value shall be taken to be the rack rent which the land could

have been let for by the year at the commencement of the lease ascertained in accordance with the Act (*i.e.*, rack rent as ordinarily calculated instead of the particular method prescribed by Rule 11. of No. IV., Schedule A. in the circumstances to which that rule applies, for purposes of Schedule A. taxation).

Rules 9, 10 and 11 of No. V. of Schedule A. are to apply also to Schedule B. and if the proprietor of the land is shown to be an infant, idiot, or lunatic, or otherwise incapable of consenting to an abatement of the rent (in cases of loss by flood and tempest), the General Commissioners may abate and discharge tax under Schedule B. to the extent of the abatement which in their opinion ought to have been made for the loss (Rule 3). Rules 1, 2, 3, 4, and 5 of No. VII. of Schedule A. are to apply to Schedule B. also, *i.e.*, the person to be charged is the occupier for the time being with subsidiary provisions (Rule 4).

If any person occupying lands for the purpose of husbandry only elect to be charged under Schedule D. and its rules instead of under Schedule B. (see above), the election is to be by notice in writing to the Surveyor for the district within two months after the beginning of the year of assessment, delivered personally or sent by registered post. The charge then is to be on profits and the profits of his occupation are to be deemed profits of a trade chargeable under Schedule D. (Rule 5). A person occupying woodlands and managing them on a commercial basis with a view to profit may elect, as above stated, to be taxed under Schedule D., in the same manner as a person occupying lands for husbandry only, and if he so elects Rule 5 (above) applies ; but the election must apply to all woodlands so managed on the same estate and if he elects the election is irrevocable as long as the woodlands

remain in his occupation. Application to prove commercial management and so bring in the right to elect must be made either to General Commissioners or Special Commissioners, not to both. Woodlands which have been planted or replanted since 19th July, 1916, are to be treated as woodlands on a separate estate if the occupier gives notice to the General or Special Commissioners within a year after planting or replanting (Rule 7).

"Any income which is charged under Schedule B." is (see Section 14 (3) (c.)) "earned" income and entitled to the lower rate as in that section provided. In the case of lands charged under this Schedule occupied by a dealer in cattle or a dealer in or seller of milk there is a power to assess under Schedule D. when the lands they occupy are insufficient for the keep of the cattle (see Schedule D. Case III. Rule 4.). In the very recent case of Malcolm *v.* Lockhart (*Times*, Jan. 29, 1919), where a farmer owned a stallion which, in addition to serving his own stock on the farm, earned fees for serving mares away from the farm, it was held that a finding by the Commissioners that these profits did not arise in respect of the occupation of the lands farmed could not be challenged and that in addition to assessment under Schedule B. in respect of the farm an assessment on those profits derived from the stallion could be maintained under Schedule D., either Case I. or Case VI. (in H.L. not yet reported, in Court below (1918) 55 S. L. R. 98).

SCHEDULE C.

This Schedule charges tax on "all profits arising from interest, annuities, dividends, and shares of annuities payable out of any public revenue, for every 20s.

of the annual amount thereof." The public revenue may be British, Colonial, Indian, or foreign, but Rule 1 of the "Rules applicable to Schedule C." makes liability to tax depend on the subject matter of tax being "payable in the United Kingdom," directs the Commissioners, designated thereafter, to charge the duty, and requires taxation at source, *i.e.* the persons intrusted with payment of the income are to account to the Crown for the tax on it.

In Secretary of State in Council of India *v.* Scoble (1903) A.C. 299, where an "annuity" was merely a mode of satisfying an antecedent debt and each payment represented, in distinguishable parts, principal and interest for deferred payment, it was held that the annual instalments did not constitute an "annuity" within either Schedule C. or Schedule D. on the ground that only that part which consisted of interest was "profit or gain" within the Income Tax Act (and see E. I. Railway *v.* Secretary of State for India (1905) 2 K.B. 413).

Dividends under 50s. per half-year are, however, to be assessed under Case III. of Schedule D. (see Rule 9 of "Rules as to interest, etc., payable out of the public revenue to or through the Bank of England, etc.," the first set of rules of Schedule C.) "except as otherwise provided in any other enactments in force at the commencement of this Act," an exception referring to India Stock Certificates Act 1863 (26 and 27 Vict. c. 73) S. 10, National Debt Act 1870 (33 and 34 Vict. c. 71) S. 36, National Debt and Local Loans Act 1887 (50 and 51 Vict. c. 16) S. 8 (5), National Debt Conversion Act 1888 (51 and 52 Vict. c. 2) S. 2 (5), Irish Land Act 1903 (3 Ed. 7, c. 37) S. 31, Irish Land Act 1909 (9 Ed. 7, c. 42) S. 2 (2).

Interest on stock not exceeding £200 inscribed in Post Office Stock Register under the War Loan (Supplemental provisions) Act, 1915, is to be paid without deduction of tax but is to be chargeable under Case III. of Schedule D. (S. 49 (1) p. 180) and this provision applies also, if the Treasury so direct, to Exchequer bonds and securities issued under the War Loan Acts (S. 49 (2)).

Income Tax is payable under this Schedule (as stated above) by way of deduction, and the provisions in that respect are contained in three sets of Rules in Schedule C.

First set of Rules, as to interest, etc., payable out of public Revenue to or through the Bank of England, the Bank of Ireland, or by the National Debt Commissioners. The machinery is for the Banks and National Debt Commissioners to deliver to the Commissioners appointed to assess true accounts in books showing, as to payments they are to make, the persons to receive, the amounts payable, and the tax thereon; the appropriate Commissioners are to assess the taxation accounts and deliver the assessment books signed by them to the Special Commissioners. The Special Commissioners are to certify the needful particulars to the Commissioners to make the assessments and to the Commissioners of Inland Revenue. As to the tax payable by the Bank of England and Ireland on the interest, etc., payable to them they are required to set it apart (*i.e.*, to this extent the tax is not levied at the source); as to tax on amounts which the Banks, and the National Debt Commissioners, have to pay over to other persons, they are required to retain the tax, the retention is to be deemed payment of the tax by the person entitled to the interest, etc., and the payment of the balance operates as a discharge of the

amount retained for tax (Rule 7). The amount retained for tax is to be paid into the general account of Commissioners of Inland Revenue at the Bank of England or Bank of Ireland.

Second set of Rules, as to interest, etc., payable out of public Revenue where payment is intrusted to "persons" other than the Bank of England or Ireland and National Debt Commissioners (and, for that is dealt with by the third set of Rules, not payable by a Public Department). These Rules provide as follows :—

The person intrusted with payment of any dividends *payable to any person in the United Kingdom out of any public revenue other than that of the United Kingdom* must, within a month after being so required by notice in the *Gazette*, deliver to the Commissioners of Inland Revenue an account in writing giving his name and residence, a description of the dividends intrusted to him for payment and, on demand by an authorized inspector, true and perfect accounts of the amount of such dividends. The Special Commissioners are to assess the dividends at the rate of tax in force at the time of payment after allowing exemptions and to give notice of the amount assessed to the person intrusted with payment. The person intrusted with payment is to pay the tax and is acquitted *pro tanto* of the dividend, and in default the amount payable may be recovered from him as income tax charged on him, and a rate of remuneration for his compliance and penalty for neglect to comply (£100 and tax chargeable) are provided.

Nothing in these Rules is to impose on any person acting as a banker an obligation to disclose his customer's affairs (Rule 8). The rules also declare (Rule 7) that the following persons shall be included as being persons intrusted with the payment of dividends within the meaning of these Rules.

(*a*) Any person having the ordinary custody of any book, or making any list ordinarily kept in the United Kingdom, wherein the right or title of the person to whom the payment is to be made is shown by the registration or entry of his name ;

(*b*) Any banker or person acting as a banker, who sells or otherwise realises coupons for any dividends (save such as are payable in the United Kingdom only), and pays over the proceeds to any person or carries the same to his account ;

(*c*) Any person who by means of coupons received from any other person or otherwise on his behalf, obtains payment of any dividends elsewhere than in the United Kingdom ;

(*d*) Any dealer in coupons who purchases coupons for any dividends (save such as are payable in the United Kingdom only) otherwise than from a banker or person acting as a banker, or another dealer in coupons.

And by Rule 9 :—

In these rules the expression " dividends " includes interest, annuities, dividends, and shares of annuities, and the expressions " coupons " and " coupons for any dividends," include warrants for or bills of exchange purporting to be drawn or made in payment of any dividends.

Third set of Rules, as to interest, etc., " payable out of public revenue by any Public Department." Interest, annuities, dividends, and shares of annuities payable out of any public revenue by any Public Office or Department of the Crown are to be charged under this Schedule by the Commissioners for Offices in the said Public Office or Department, they are to have like powers to other Commissioners assessing duty under Schedule C. and to appoint assessors and collectors from their

officers intrusted with payment and these assessors and collectors are to compute and certify the amount of tax to the proper officer for payment, who is to retain and pay the amount to the general account of the Commissioners of Inland Revenue at the Bank of England or Bank of Ireland.

Exemptions: -By Rule 2 (*d*) of the General Rules applicable to Schedule C., where the income of securities is payable here but these securities are owned by a person not resident here and such securities are those of a Foreign State or British Possession no tax is chargeable, on proof of these facts to the Commissioners of Inland Revenue. And by a proviso where such securities are held under a trust and the "sole beneficiary in possession" can put an end to the trust by requiring transfer such beneficiary shall be deemed the owner for the purpose of the rule. Relief may be given by the Commissioners of Inland Revenue either by way of allowance or repayment. Schedule C. is also subject to the General Rules applicable to all Schedules. By Rule 3 of these last-mentioned rules a British subject whose ordinary residence has been in the United Kingdom and who has left the United Kingdom for the purpose only of *occasional* residence abroad is to be treated as a person actually residing in the United Kingdom. This rule must be read with Rule 2 (*d*) of the General Rules applicable to Schedule C. above.

Exemptions from duty under Schedule C. are also provided by Rule 2 (*a*), (*b*), (*c*) and Rule 3 of the "General Rules applicable to Schedule C." and by Rule 10 of the first set of Rules above referred to (headed: "Interest, etc., payable to or through Bank of England, Bank of Ireland and National Debt Commissioners"), as follows:—

Stock dividends and interest (1) transferred to

accounts in books of Bank of England in name of Treasury or National Debt Commissioners pursuant to any Act of Parliament,

(2) belonging to the Crown.

(3) belonging to any accredited minister of any foreign state resident in the United Kingdom.

By Rule 3 of the General Rules applicable to Schedule C., interest on securities constituting any Government loan for the purpose of the present war, issued before or after this Act, subscribed for by a Bank carrying on *bona fide* banking business, is relieved from tax under this Schedule, by repayment or otherwise, but the Bank must include the interest in computing its profits under Case I. of Schedule D. The Bank must prove the facts to the Special Commissioners.

By Rule 10 aforesaid (of first of the three sets of Rules regulating assessment and collection of duty under Schedule C.) no tax is to be deducted from dividends certified under S. 28 of Charitable Trusts (Amendment) Act, 1855, to the Bank of England.

By S. 37 (1) (*b*) of the Act exemption from duty under Schedule C. is conferred where the income, otherwise taxable thereunder, belongs to any body of persons or trust established for charitable purposes only or which according to the regulations is applicable to charitable purposes only and so far as it is applied to charitable purposes only—charity and charitable have the ordinary technical meaning in equity in this statute also, viz., purposes within the now repealed statute 43 Eliz., c. 4, or analogous thereto, Commissioners for Special Purposes of Income Tax *v* Pemsel (1891) A.C. 531, and by S. 38 similar exemption is conferred on Trustees of British Museum.

By S. 37 (1) (*c*) of the Act exemption is conferred where trustees hold income applicable solely to repairs of any

Cathedral, College, Church or Chapel or any building used solely for Divine worship and so far as applied to those purposes.

By S. 39 exemption from tax under this Schedule is conferred on :—

(1) Unregistered friendly societies whose income does not exceed £160, and registered friendly societies precluded by Act of Parliament, or their rules, from assuring to any person more than £300 by way of gross sum or £52 by way of annuity.

(2) Registered trade unions which are precluded by Act, or by their Rules, from assuring to any person more than £300 by way of gross sum or £52 by way of annuity, in respect of interest and dividends applicable and applied solely for "provident benefits," which are defined as payments expressly authorized by the registered rules of the union to be made to members during sickness or incapacity, or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or lost his tools by fire or theft, and a payment for or on account of funeral expenses on death of a member or his wife or a provision for children of a deceased member.

(3) (*a*) Any savings bank certified under Savings Bank Act, 1863, in respect of interest and dividends from investments with National Debt Commissioners.

(*b*) Any savings bank (whether certified under Savings Bank Act, 1863, or not) in so far as income is applied in payment, or credit, of interest to any depositor :

(i) but the depositor (if his income from all sources is over £130 a year) is to be liable to tax, on the interest paid, or credited, to him without deduction of tax, under Case III., Schedule D., and

(ii) if the interest paid or credited to any depositor in any year for which exemption is claimed by

the Bank exceeds £5, the Bank must make a return of all depositors to whom over £5 for interest has been paid or credited and their addresses and the amounts paid or credited. Duly making the return is a condition of relief and the return must be made before the 1st of May in the year following that in respect of which exemption is claimed.

(4) A society registered under the Industrial and Provident Societies Act, 1893, unless it sells to non-members and the number of its shares is limited by its rules or practice ; but members of and persons employed by the society are not exempt from charge to the tax to which they would otherwise be liable.

(5) An "approved Society" within part I. of National Insurance Act, 1911, and any branch of such Society, the Insurance Commissioners, the Scottish, Irish, and Welsh, Insurance Commissioners, are entitled to exemption in respect of income derived from funds held, controlled, or managed, by them under or for the purposes of the Act. And this exemption is to be in addition to and not in derogation of any other exemption.

(6) An insurance committee established under Part I. of the National Insurance Act, 1911, in respect of income from funds or credits of the Committee under National Insurance (Health) Acts, 1911 to 1918, or investments thereof ; the trustees of the special fund constituted by Subs. 6 of S. 48 of the National Insurance Act, 1911, as amended by the National Health Insurance Act, 1918, in respect of income from that fund ; the National Health Insurance Joint Committee in respect of income from funds held, controlled, or managed, by them under or for the purposes of the National Insurance (Health) Acts, 1911 to 1918. This exemption to be in addition to and not in derogation of any other exemption.

Claims for exemption under Ss. 37, 38 and 39 of the Act under this Schedule must be made to the Special Commissioners (S. 40 (1)), the claims must be verified by affidavit and proof may be given by the treasurer, trustee, or any duly authorized agent, on affidavit made before a general or additional Commissioner for the division in which the deponent resides. Where the claim is allowed the Special Commissioners must issue an order for repayment (S. 40 (2) and (3)). The penalty for a "false or fraudulent" claim for exemption in respect of interest, etc., chargeable under Schedule C., is £100 and if the claimant claims on his own behalf treble the tax also. (S. 40 (4)).

S. 41 imposes a time limit of three years, next after the end of the year of assessment to which the claim relates, for claiming repayment (except as provided in S. 25—income accumulated until the happening of a contingency).

In "Special Provisions" (Ss. 42–56 of the Act) there are other Sections which confer exemption. Under S. 46 (1) securities which the Treasury have power to issue free from tax, and do so issue, subject to the condition that the securities are in the beneficial ownership of persons not *ordinarily* resident in the United Kingdom; (2) securities so issued forming part of the foreign life assurance fund of an assurance company if the income is applied for purposes of that fund or reinvested to form part of it; (3) income arising abroad from investments of the foreign life assurance fund of an assurance company remitted to the United Kingdom and invested as part of that fund in any such securities; (4) securities issued in United States of America by a Municipal Corporation, County Council or other Local Authority in the United Kingdom (under Treasury authority); are not to be liable to tax except when held by persons

domiciled in the United Kingdom or British subjects ordinarily resident in United Kingdom. Income arising from the securities mentioned in (1), (2) and (4) is exempt from taxation, so is the income specified in (3), and in (3) any tax paid may be recovered by way of repayment. S. 47 exempts the accumulated interest on War Savings Certificates. And S. 48 refers to securities issued in connection with any Government loan raised for the purpose of the present war free from income tax.

SCHEDULE D.

Schedule D. contains six distinct and separate heads of charge called "Cases." The whole Schedule and its six Cases are controlled by rules referred to as "Miscellaneous Rules applicable to Schedule D." Each Case is also controlled by a rule or rules and Cases I. and II. have, in addition to a separate rule applicable to each of them, "rules applicable to Cases I. and II." Inasmuch as the tax in each Case is imposed (see Schedule D. 2) "subject to and in accordance with the rules applicable to the said Cases respectively" the language of the rules must be read into the charge, the rules in fact mark out the precise limits of the charge (see Colquhoun *v.* Brooks (1889) 14 App. Cas. 493). There are also the general rules applicable to all the Schedules A. to E.

1. Tax under this Schedule shall be charged in respect of :—

(*a*) The annual profits or gains arising or accruing :—

(i) to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere ; and

(ii) to any person residing in the United Kingdom from any trade, profession, employment, or vocation, whether the same be respectively carried on in the United Kingdom or elsewhere; and

(iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, or from any trade, profession, employment, or vocation, exercised within the United Kingdom; and

(*b*) All interest of money, annuities, and other annual profits or gains not charged under Schedule A, B, C or E, and not specially exempted from tax;

in each case for every twenty shillings of the annual amount of the profits or gains.

2. Tax under this Schedule shall be charged under the following cases, and subject to and in accordance with the rules applicable to the said Cases, viz:—

Case I. Tax in respect of any trade (S. 237) other than a trade relating to lands, tenements, hereditaments or heritages directed to be charged under Schedule A. (Schedule D. 2 Case I. read with rule applicable to Case I).

Case II. Tax in respect of every profession, employment or vocation not charged under any other Schedule (Schedule D. 2 Case II., read with rule applicable to Case II.).

Case III. Tax in respect of profits of uncertain value and other income described in the rules applicable to Case III. (Schedule D. 2 Case III.). The scope of the tax under this case appears more particularly from rules (1), (3) and (4).

Case IV. Tax in respect of income from securities

out of the United Kingdom except such income as is charged under Schedule C. (Schedule D. 2).

Case V. Tax in respect of income from possessions out of the United Kingdom. (Schedule D. 2).

Case VI. Tax in respect of any annual profits or gains not falling under any of the previous "Cases" and not charged by virtue of any other Schedule.

Cases I. and II. charge "profits," "*annual* profits or gains" (Schedule D. 1 (*a*)), "the balance of the profits or gains" (Rule applicable to Case I.), "the balance of the profits, gains and emoluments" (Rule applicable to Case II.). Profits are the gross receipts, less the revenue expenditure incurred for the purpose of earning them (Russell *v.* Town and County Bank (1888) 13 App. Cas. 418, Gresham Life Assurance Society *v.* Styles (1892) A.C. 309, Usher's Wiltshire Brewery Ltd. *v.* Bruce (1915) A.C. 433). But the prohibitions against deduction referred to below show that income tax "profits" are neither the return expected for risking capital nor the surplus left after deducting capital and outgoings. If A. trades with borrowed capital and pays annual interest thereon, the lender, receiving that interest out of earnings, is treated under the Act as receiving a share of the profits, the trader pays tax on the profits and for each £1 of interest payable deducts tax, and if he has already paid tax on profits to a greater amount than the interest retains such tax. (See note p. 140 "collection at source" and S. 209 (1) (*b*) p. 209). This question of profits has already been referred to under No. III. of Schedule A. S. 209 of the Act and Rule I. (1) of the Rules applicable to Cases I. and II. Schedule D., prohibit other deductions than those enumerated or allowed by the Act (but see on this Usher's Wiltshire Brewery Ltd. *v.* Bruce (1915) A.C. 433). The Rules which restrict or measure deductions are the Rules applicable to

Cases I. and II. Rules 3 to 8 both inclusive, and General Rules applicable to All Schedules, Rule 2. What is done with profits, once they are earned, is not as a rule material, Mersey Docks and Harbour Board *v.* Lucas (1883), 8 App. Cas. 891.

Case I. Tax in respect of any "trade" (defined in S. 237) not contained in any other Schedule. (See below p. 73 as to trades excluded from this Schedule.)

To constitute a trade or concern there must be a business carried on on commercial lines and making profits. The question is similar to that already considered under No. III. of Schedule A. Under that Rule of that Schedule a Municipal undertaking supplying water at compulsory rates, intended merely to meet expenditure but eventually proving more than sufficient for that purpose, was held not to be assessable, *e.g.*, Glasgow Corporation Water Commissioners *v.* Inland Revenue (1875) 12 S.L.R. 466, so under this Schedule, Case I., a mutual life insurance society whose members made contributions to a common fund, pursuant to a scheme for their mutual benefit, was held not to trade: for the essence of trade is two parties with conflicting interests. (New York Life Insurance Co., *v.* Styles (1889) 14 App. Cas. 381). On the other hand under this Schedule and Case as under No. III. of Schedule A. part only of an organization's labours, primarily or mainly not commercial, may involve trading and income tax on profits, as a hospital taking paying patients at remunerative rates (St. Andrew's Hospital, Northampton *v.* Shearsmith (1889) 19 Q.B.D. 624, and see Paddington Burial Board *v.* Commissioners of Inland Revenue (1884) 13 Q.B.D. 9, Dillon *v.* Corporation of Haverfordwest (1891) 1 Q.B. 575), so a trustee, under a deed of assignment for benefit of creditors, who continued to supply steam power to sub-lessees was held in this

respect to have carried on a trade or business (Armitage *v.* Moore (1900) 2 Q.B. 363).

Other examples are :—Religious Tract and Book Society of Scotland *v.* Forbes (1896) 33 S.L.R. 289, Grove *v.* Young Men's Christian Association (1903) 88 L.T. 696, and Carlisle Golf Club *v.* Smith (1912) 2 K.B. 177. Further isolated transactions are not "trading" *e.g.*, a mere sale of property for more than was given for it. See Stevens *v.* Hudson's Bay Co. (1909) 101 L.T. 96, Californian Copper Syndicate *v.* Inland Revenue (1909) 41 S.L.R. 691, Tebrau Rubber Syndicate *v.* Farmer (1910) 47 S.L.R. 816.

As to businesses to be assessed under other Schedules :—Concerns within Schedule A., No. III., are assessed under that Schedule but in accordance mainly with the Rules of Schedule D.

Certain other businesses though not charged under this Case or Schedule may fall within it :—

1. Lands occupied for husbandry only :—the occupier may *elect* to be taxed under Schedule D. (Schedule B., Rule 5). Lands occupied by dealers in cattle and milk in certain circumstances are by Rule 4 of Rules under Case III. to be dealt with under that Case.

2. Woodlands managed with a view to realizing profit :—the occupier may *elect* to be taxed under Schedule D. (Schedule B., Rule 7).

3. Hop gardens are apparently to be assessed under Schedule B. (Schedule B., Rule 8). Nurseries and market gardens charged under Schedule B. are to be *estimated* under this heading (same rule).

Where a Bank has obtained relief from tax under Schedule C. on interest on securities representing its subscriptions to a War Loan (by Rule 3 of General Rules under Schedule C), such interest must be included in computing profits or gains for the purpose of assess-

ment under Case I. of this Schedule (Rule 14 of Rules for Cases I. and II.).

Case II. A professional bookmaker has been held taxable under this Case in respect of his betting profits (Partridge *v.* Mallandaine (1886) 18 Q.B.D. 276). Denman J. was of opinion a man would be taxable on his profits if he made a systematic business of receiving stolen goods. Persons employed by private firms or individuals fall under this Case and ministers of nonconformist bodies as distinguished from ministers of an Established Church, the latter falling under Schedule E.

Rules as to Deductions, Cases I. and II.

Non-Allowable Deductions.

By Rule 3 in computing profits and gains no sum is to be deducted in respect of :—

(*a*) Expenditure not "wholly and exclusively" laid out for the purpose of the trade, etc., or profession. The leading cases are Smith *v.* Lion Brewery Co. Ltd. (1911) A.C. 150, and Usher's Wiltshire Brewery Ltd. *v.* Bruce (1915) A.C. 433. In the latter case the findings of the Commissioners were :—that the profitable conduct of the Brewery entailed the acquisition of "tied" houses, that such tied houses were bought or leased for and held in the course of, and solely for the purposes of, this business, that these houses were let to tenants under a "tie," a covenant to deal with the Brewery for beer, and let at a lower rent in consideration of the "tie." Further, that this "tied" house system of securing a market for their beer had enabled the Brewery to earn by means of the houses as long as they were licensed largely increased profits, and that independently of this result the houses would be neither

acquired nor retained (in fact as soon as any house lost its license the Brewery got rid of it). On these findings the House of Lords held that repairs executed by the landlords and rates and taxes paid by them (for all of which the tied tenants were liable under their agreements) with the object of avoiding loss of tenants, the exaction (with the same object) of a lower rent than the full annual value, payment of fire insurance premiums and premiums on insurance against loss of licenses, legal expenses in connection with the renewal of the licenses, were allowable deductions. The circumstance that some or all of these payments enured or might enure also for the benefit of the tenant's separate trade in the tied house did not prevent them being disbursements wholly and exclusively expended for the purposes of the brewers' trade.

The earlier cases are, however, subject to the effect on them of Usher's Wiltshire Brewery Ltd. *v.* Bruce, valuable as examples. In Dillon *v.* Corporation of Haverfordwest (1891) 1 Q.B. 575, it was contended that since the Corporation could only supply gas to private customers and make profits after they had lit the streets of the town, the expenses of street lighting were, as a necessary preliminary to and condition of earning profits, wholly and exclusively laid out for the purposes of a trade, the trade of supplying private customers. This contention was rejected, the Court severing the commercial and non-commercial parts of the undertaking, treating the commercial parts alone as a "concern" (see this and similar cases above) and adopting a corresponding division of expenditure. In Reid's Brewery Co. *v.* Male (1891) 2 Q.B. 1, a brewery business was considered to include a banking and money-lending business carried on in the interest of the brewery business and, as the Court held, not con-

stituting a separate business. The brewery in their department of banking and money-lending accommodated customers of their brewery business only, they lent money to them, they received money from them on deposit, all such loans and receipts were in connection with current dealings of customers with the brewery and no loan was made by way of permanent investment. It was found that the profits of the brewery were largely increased by the financial accommodation thereby afforded to customers and that the making of loans to customers was needful to enable the Company to realize its brewing profits and was a recognised incident of the business of London brewers. The claim was to deduct, as bad debts, irrecoverable loans made to customers through this money-lending business, and the Court held the claim allowable on the ground that the money had been wholly expended for the purpose of the brewing business and not as an investment. The same result by different method would have been arrived at by treating brewing and banking, etc., business as distinct and allowing set-off, for clearly bad debts would have been allowable in any separate statement of profits of the banking business and both businesses would have been taxable under Schedule D.

In Rhymney Iron Co. *v.* Fowler (1896) 2 Q.B. 79, a subscription to a coal owners' association which indemnified owners against loss by coal strikes was in question. The Company claimed excess of subscriptions over indemnities received (case under Schedule A., No. III., but the Rules of Schedule D. applied). The Commissioners had refused to allow the deduction and the Court upheld the refusal, but a good deal depends on how the case is put before the Commissioners. Bruce J. said expenses for the purposes of such trade do not include "expenses to meet the contingency of loss

while the trade is not being carried on," but perhaps a better statement of the objects of the association and the object and purpose of the Company in subscribing to it might have shown the main purpose not so much to get indemnity for loss in case of strikes as to ensure continued working and its incident profit by preventing strikes. There was some, but slight, evidence of this. In Strong & Co. *v.* Woodifield (1906) A.C. 448, the loss was not really incidental to the trade and not money laid out for the purpose of the trade. A brewery company owned an inn carried on by a manager as part of their business. A guest sleeping in the inn had been injured by the fall of a chimney and had recovered damages for the injury and costs ; the damages and costs were held not deductible—it was not a trading loss, it did not fall on the trader in his character of a brewer. Lord Loreburn, L.C., contrasted the losses sustained by a railway company in compensating travellers injured in travelling on their lines. In Moore *v.* Stewart and Lloyds Ltd. (1906) 43 S.L.R. 811, a company, by undertaking to make up the yearly profits of another company to a certain amount, got a commanding interest in its management ; the sole object of getting the interest, and agreeing to make and making the payment for it, was to keep up prices of the goods in which both Companies dealt and so make larger profits for the paying Company, and in fact larger profits had been made by them, it was stated, by reason of the arrangement and payment, after allowing that payment : Held allowable as a deduction. Guest, Keen & Nettlefolds, Ltd. *v.* Fowler (1910), 1 K.B. 713, follows the same principle as the last case. An association for keeping up prices and so earning larger profits, each firm to get certain percentage of the total orders, and if executing more than the agreed percentage to pay the

association 10s. on each ton of excess, such payments to be shared *pro rata* among the firms whose orders executed had been less than their agreed percentage. The claim was to deduct the total of such payments made by them to the association less such receipts from the association. Held allowable under this Rule.

In Lochgelly Iron and Coal Co. *v.* Crawford (1913) 50 S.L.R. 597, contributions to coal owners' association to defray the expenses of the Scottish Conciliation Board, which Board settled disputes between employers and workmen, were allowed on the footing of being part of the cost of the machinery of the business (under Schedule A., No. III., but under this Rule of Schedule D. as applied). In Darngavil Co. *v.* Francis (1913) 50 S.L.R. 427, the principle was that purchase money of wagons to be used in the business was not, but hire of the same wagons was, allowable and that as a consequence under a hire purchase contract the instalments must be separated.

In Smith *v.* Incorporated Council of Law Reporting (1914) 3 K.B. 674, the Court held there was evidence to support the Commissioners' finding and therefore their decision was final. The Council were accustomed to give a bonus to reporters after long and faithful service and had done so in this case: Held, money laid out for the purpose of the trade.

In Moore *v.* Inland Revenue (1915) S.C. 91, deduction was refused of expenses in promoting bills to construct a line to serve a coalfield, but the Court disagreed both as to allowance or disallowance and the principle on which disallowance proceeded. The bills were opposed by the Railway Company (whose refusal of facilities originally led to their introduction) and abandoned on a promise by the Railway Company of facilities in future.

In Grahamstown Iron Co. *v.* Crawford, (1915) 52 S.L.R. 385, the question was as to a levy to a trade association to raise and keep up prices and so enable members to earn larger profits. The claimants contended that their mere statement that the levy or subscription was for the purpose of their trade sufficed, the Special Commissioners required the accounts of the Association showing how their levies were applied. The claimants did not object on the ground that the application of the levies by the Association was irrelevant in reference to the question whether the purpose in subscribing was to earn profits and was made wholly and exclusively for the purposes of the trade, but alleged the accounts were not under their control nor were they entitled to see them by the rules. The Court, observing the books of the Association might be disclosed in confidence, held that the Commissioners were entitled to call for their production. The Court also pointed out that every member of the Association must have similar interest to the claimants in obtaining disclosure in some manner if allowance depended on it. The expenditure must be to earn profits see A. Thompson, Black & Co. Ltd. *v.* I.R. (1919) 56 S.L.R. 185, therefore expenditure to reduce a Company's capital which does not increase earnings, though it may enable a dividend, not otherwise payable, to be declared, is not an allowable deduction. Compare language of Rule 2 (1) (*a*) of General Rules All Schedules "any sums paid or expenses incurred *wholly exclusively and necessarily* in the performance of his duty as minister." This Rule applies to nonconformist ministers who are assessable under Case II., Schedule D. Cases on it are given under Schedule E., under which Schedule it applies to Ministers of the Established Church.

(*b*) Expenses of maintenance of the parties, their families or establishments or for other domestic or private, as distinguished from business or professional, purposes.

(*c*) Rent or annual value of any "dwelling house" (dwelling house here, see Russell *v.* Town and County Bank, (1888) 13 App. Cas. 418, does not mean premises primarily business premises used also as residences, *e.g.*, bank premises over which the manager resides, or a manufactory or warehouse in which some custodian or servant resides, for the purpose of the business, used in part as a residence) or domestic offices or any part thereof except such part as is used for the purposes of the trade or profession. Where part is used for business purposes the deduction is not to exceed two-thirds of annual value or rent *bona fide* paid for such dwelling house or offices; *e.g.*, part user of a dwelling house for professional purposes as in case of a doctor or dentist using part of the house as consulting room, etc. Rule 2 of the General Rules applicable to All Schedules has special provisions which would operate under Schedule E. in the case of clergymen of the Established Church who are assessed under that Schedule, and would operate under this Schedule (D.) in the case of Nonconformist Ministers who fall within its terms and not within Schedule E. By this Rule (2 (1) (*b*)) in assessing tax chargeable on a Minister of any religious denomination a deduction is to be made of such part of the rent (not exceeding one-eighth), as the Commissioners may allow, paid by him in respect of a dwelling house any part of which is used mainly and substantially for the purpose of his duty as such minister, and where he is in the occupation of a dwelling house but pays no rent therefor he shall, for the purpose of this provision, be deemed to pay a rent equal to annual value as assessed under

Schedule A. (relief by deduction or repayment). And see Rule 5 (Rules, Cases I. and II.) *infra*.

(*d*) Expenditure on repairs of premises occupied for the purpose of the trade or profession, or for supply, repairs or alterations of implements, utensils or articles employed for the purposes of the trade or profession, beyond a year's allowance based on average expenditure of three years preceding year of assessment. See on this Usher's Wiltshire Brewery Ltd. *v.* Bruce, (1915) A.C. 433.

(*e*) Any loss not arising out of the trade or profession. Strong & Co. Ltd. *v.* Woodifield, (1906) A.C. 448 (see above, p. 77), losses to be debited to the assets account cannot be deducted ; losses properly to be debited in a profit and loss account can be, but only if arising out of the trade or profession.

(*f* and *g*) Capital withdrawn from, or employed or intended to be employed in, a trade or profession and any capital employed to improve premises for the purposes of the trade or profession. The question of what is capital as distinguished from current, or revenue, expenditure has been considered in several cases. Lord Dunedin in Vallambrosa Rubber Co. *v.* Inland Revenue, (1910) 47 S.L.R. 488, indicated, as one test of revenue expenditure, its recurrence ; whereas capital expenditure does not recur, it is made once for all. Another judicial indication given was that revenue expenditure consisted of what ought properly to appear in the income or profit and loss account. It is the purpose of the expenditure, to some extent perhaps influenced by the amount, which determines the question. And there have been many decisions. See Miller *v.* Farie, (1878) 16 S.L.R. 189, Coltness Iron Co. *v.* Black, (1881) 6 App. Cas. 315 (cases of mines, Schedule A. No. III., falling therefore within the Rules of Sche-

dule D.). See also Bonner *v.* Basset Mines Ltd. (1913) 108 L.T. 764. In Gillatt *v.* Colquhoun, (1884) 33 W.R. 258 lease purchased, short term only unexpired, claim to deduct each year for depreciation in value of this wasting asset was refused; annual value only allowed, that annual value to be calculated independently of the rent payable under the lease purchased and the premium paid to acquire such lease. In St. Andrew's Hospital, Northampton *v.* Shearsmith, (1887) 19 Q.B.D. 624, expenditure on improvements to hospital was held on the facts inadmissible. In Highland Railway Co. *v.* Balderston, (1889) 26 S.L.R. 657, expenditure on one section of the permanent way to bring it up to the standard of the rest of the line and on improvement of another section was disallowed as capital expenditure. In London Bank of Mexico and South America *v.* Apthorpe, (1891) 1 Q.B. at 387, purchase money for transfer of concession to issue bank notes was disallowed as capital expenditure: on appeal (1891) 2 Q.B. 378 this point does not appear to have been raised. In Arizona Copper Co. *v.* Smiles, (1891) 29 S.L.R. 134, the claim put forward (the facts being very poorly found) was that a bonus of 10 per cent. payable on repayment of a loan, at an earlier date than that stipulated for, was an expense of earning gross receipts and therefore deductible under a charge that attaches only to "profits." The claim was rejected, it was merely a debt due. Anglo-Continental Guano Works *v.* Bell, (1894) 70 L.T. 670, is probably not now to be supported, it was hardly a case of "trading with borrowed capital" for the loans were short loans from bankers, these loans enabled goods to be bought for cash instead of on credit and the interest paid for them was the source of higher profits earned. In Farmer *v.* Scottish North American Trust Limited, (1912) A.C. 118, interest paid for loans which constituted expenditure by

means of which the Company procured the subject matter whence they derived profit was allowed on the ground unsuccessfully contended for by the appellant in the last case cited. The Company was a financial and investment company and it was part of its business from time to time to borrow money to pay for securities purchased, the money borrowed was a fluctuating amount at a rate of interest varying with the current rate. This interest was allowed on the ground that it was expenditure incurred to earn, and earning, gross receipts, and therefore to be deducted from such gross receipts to ascertain profits. And the House of Lords dismissed the contention that the money so borrowed was "capital"—capital in the Income Tax Acts should primarily be construed in its ordinary sense and meaning. In Royal Insurance Company *v.* Watson, (1897) A.C. 1, the Royal Insurance Company had purchased the business of the Queen Insurance Co., it was one of the terms of the purchase that they should either continue to employ the Manager of the Queen Insurance Co. or pension him, and the Royal Insurance Co. dispensed with his services and paid him, pursuant to their contract with his former employers, a lump sum; this sum was disallowed as a deduction, on the ground that it was part of the purchase money for the concern and consequently capital expenditure. In Hancock *v.* General Reversionary and Investment Company, (1919) 1 K.B. 25, where a Company in lieu of continuing to pay an annuity, as a retiring allowance to a former officer of theirs who had retired, expended a sum of £4,994 in purchasing for him an annuity of like amount to that which he had been receiving, the sum was allowed as an expense of management; the continuing liability was a management expense and the expenditure was the pension in another form, actuarially equivalent in value and identical in character, and not the price of capital

assets. In Southwell *v.* Savill, (1901) 2 K.B. 349, costs of unsuccessful applications for licenses were disallowed, it being admitted that the cost of successful applications was treated as capital expenditure, as the price of an addition to the Brewery property; the fact that the expenditure did not turn out profitable could not alter its character as capital or current expenditure. In Delage *v.* Nugget Polish Co., (1905) 92 L.T. 682, a payment to be made for 40 years of 8 per cent. on gross receipts from sales, such payments being the purchase price of the exclusive right of manufacturing and selling certain articles according to a secret process, was disallowed as a deduction as being in effect capital expenditure. In Alianza Co. *v.* Bell, (1906) A.C. 18, a foreign mine was worked as a concern by an English Company, resident in the United Kingdom; the Company had purchased land containing nitrate deposits which they worked, their claim to make deductions in respect of the exhaustion of these deposits was refused. In Inland Revenue *v.* Western Steamship Co., (1907) 44 S.L.R. 715, the Company bore part of their marine risks themselves and on a loss claimed to deduct the proportion of value of the lost vessel which they had so "assured," held inadmissible as being a loss of capital. In English Crown Spelter Co. *v.* Baker, (1908) 99 L.T. 353, a large sum advanced partly with a view of securing a supply of the raw material needed by the Company, as used in their business, was on the facts disallowed as being the employment of capital in a separate concern, the Court holding the advances were in truth an investment and not money laid out exclusively for the purposes of their business, nor advanced against specific parcels of goods to be delivered, neither was it a bad debt of the business. The advances were made out of the usual course of business and on account of the

Company assessed having a preponderating interest in the Company to which the advances were made. It was not enough that the advance was made to benefit the Spelter Co.'s business, by securing to them from the borrowing Company a supply of the raw material the lending Company required, if (as Bray J. held) it was an investment of capital. Vallambrosa Rubber Co. *v.* Farmer, (1910) 47 S.L.R. 188, is chiefly valuable for Lord Dunedin's suggestion as to one test whether expenditure is capital or revenue expenditure (referred to above); as a decision it lays down and could lay down (on the very imperfect information afforded by the case) no general principle, the contention that because the whole or a part of the expenditure in a particular year produced no revenue in that year it was capital expenditure was abandoned by the Counsel for the Crown.

In Ounsworth *v.* Vickers, (1915) 3 K.B. 267, exceptional dredging, construction of a deep water berth for continuing use, was held on the facts to be capital and not revenue expenditure—on the footing of "once for all and not recurrent"—(Lord Dunedin's test).

See also Moore *v.* Inland Revenue, (1915) 52 S.L.R. 59, referred to above.

(*h*) Any interest which might have been made if any such sums as aforesaid had been laid out at interest.

(*i*) Any debts except those shown to be bad and doubtful debts properly estimated: in case of bankruptcy or insolvency of debtor the reasonably estimated dividends in respect thereof to be deemed the value. But the bad debts, etc., must to be allowable be debts of the business assessed and not a loss of capital, Reid's Brewery Co. *v.* Male, (1891) 2 Q.B. 1, English Crown Spelter Co. *v.* Baker, (1908) 99 L.T. 353 (both cases given above), unless the same result can be arrived at (in case

of a non-capital loss) under the rule of setting off loss on one concern against loss on another concern (under the same Schedule).

(*j*) Any average loss (marine insurance) beyond the actual amount of loss after adjustment.

(*k*) Any sum recoverable under an insurance or contract of indemnity: inapplicable where a person has debited himself with premiums and become his own insurer; there is no contract, see Inland Revenue *v.* Western Steamship Co., (1907) 44 S.L.R. 715 (referred to above).

(*l*) Any annual interest or any annuity or other annual payment payable out of profits or gains: but an annuity is not payable out of profits or gains where the annuity is to be deducted as part of the expenditure which earned profits, as in case of a Company selling annuities. "Until the payments which the annuities necessitate have been taken into account it cannot be ascertained whether there are any profits or gains or not," Gresham Life Assurance Society *v.* Styles, (1892) A.C. 309. As to the meaning of "payable out of profits" see L.C.C. *v.* A.G., (1901) A.C. 26. Edinburgh Life Assurance Company *v.* Lord Advocate, (1910) A.C. 143, Leeds Corporation *v.* Sugden, (1914) A.C. 483, and Hancock *v.* General Reversionary and Investment Co., (1919) 1 K.B. 25. In Alexandria Water Co. *v.* Musgrave, (1883) 11 Q.B.D. 174, interest paid to debenture holders not allowed as a deduction. If a Company raises part of its capital by shares and part by debentures there is no more reason why interest on debenture capital should be deducted than interest on share capital, the profits could not differ according as the capital was raised wholly by shares or partly by shares and partly by debentures (Lord Herschell in later case referring to this decision).

(*m*) Any royalty or other sum paid in respect of the user of a patent, see Lanston Monotype Corporation *v.* Anderson, (1911) 2 K.B. 1019, and Boyd and Sons *v.* Inland Revenue, (1918) 55 S.L.R. 661. See Rule 19 (2) and 21 (1) of General Rules for all Schedules.

Allowable Deductions.

By Rule 4 (1) Excess profits duty, when paid, to be allowed as a deduction from the profits of the year which included the end of the accounting period for which the excess profits duty was paid. Any repayment of excess profit duty is to be treated as profit in the year in which it is received. (Excess profits duty chargeable only, by virtue of Finance Act, 1918, on profits from sale of trading stock otherwise than in ordinary course of trade, is not to be deemed excess profits duty within this rule).

(2) Payment of excess profits duty is not to be deemed a "specific cause" for the purpose of Rule 3 of Miscellaneous Rules applicable to Schedule D.

(3) If in any year of assessment excess profits duty, deducible as above, is ascertained too late to give effect to the deduction when assessing income tax, the reduction of income tax, which such deduction would have brought about, is to be made from the amount payable for excess profits duty or is to be repaid to the taxpayer.

(4) The provisions as to excess profits duty are to apply also to Munitions Exchequer payments (sums paid or payable into the Exchequer under Section 4 of Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment) but the relief to the taxpayer under (3) of this rule is to be in all cases by way of repayment and not by deduction. (See also s. 53.)

(5) Any excess profits duty and any Munitions Exchequer payments which, under Section 48 of Finance

Act, 1916, are remitted for the purpose of collection are not to be deemed paid within this rule. (Section 48 of Finance Act, 1916, provides for the adjustment of excess profits duty and Munitions Exchequer payments in case of controlled establishments.)

By Rule 5 (1) computation of tax is to be made exclusive of profits from lands occupied for the purposes of the trade or profession, but if the lands so used are outside the United Kingdom no deduction or set off in respect of their annual value is to be allowed. The latter part of the provision gets rid of Stevens *v.* E. Boustead and Co., (1918) 1 K.B. 382. Where the premises are in United Kingdom they are assessable under Schedule A. and for that reason there is a deduction from Schedule D., if abroad there is of course no assessment and, now, no deduction of their annual value.

(2) The amount of such deduction shall not exceed the amount of the assessment to tax under Schedule A. as reduced for the purpose of collection—but this provision is not to apply to premises being mills, factories or other similar premises. In General Hydraulic Power Co. *v.* Hancock, (1914) 2 K.B. 21, it was held that the method of making this deduction was to deduct the assessment under Schedule A. of each of the three years averaged from the profits of those years respectively, and not to take the triennial average of profits without such deductions, and from the amount so found to take the Schedule A. assessment for the year of assessment. In that case of course the Schedule A. annual value had been raised in the year of assessment and the method of deduction made considerable difference.

By Rule 6 (1) in charging tax under Case 1 (profits of trade) the Commissioners may allow such deductions as they consider reasonable as representing the diminished value by reason of wear and tear during the year of any

machinery or plant used for the purpose of the trade and owned by the trader. Diminished value by temporary disuse due to the War is included. See s. 56. This deduction was first allowed by the Customs and Inland Revenue Act, 1878, Section 12 (see Forder *v.* Handyside, (1876) 1 Ex. D. 233, for the previous law), its provisions were amended and extended by Section 26 of the Finance Act, 1907. On these provisions the decisions so far as they involve any point of law (and not discussion of the accountancy principle for estimating allowance) establish that it is for the Commissioners to determine what is a reasonable allowance or deduction and that if they have properly considered the matter, that is, have excluded from consideration no element they should have taken into account nor included any element they should have left out, the Court will not entertain an appeal, see P. and O. Steam Navigation Co. *v.* Leslie, (1900) 82 L.T. 137 (an appeal from P. and O.S.N. Co. *v.* Lee, (1898) 79 L.T. 118), Cunard Steamship Co. *v.* Coulson, (1899) 1 Q.B. 865, Leith Hull and Hamburgh Steam Packet Co. *v.* Musgrave, (1899) 36 S.L.R. 745, London County Council *v.* Edwards, (1909) 100 L.T. 444. So far as Caledonian Railway Co. *v.* Banks, (1880) 18 S.L.R. 85, lays down that the deduction for wear and tear is a deduction for diminished value as a "means of earning income and not as a saleable subject," the proposition is too wide; the allowance is given because sooner or later the subject matter will be worn out, but as long as its working life lasts it may be an equally effective means of earning income and the later cases clearly recognize this; mere obsolescence of type of plant is a different matter, see Rule 7 as to this.

John Hall Junior and Co. *v.* Rickman, (1906) 1 K.B. 311, and Earl Derby *v.* Aylmer, (1915) 3 K.B. 374, are

decisions turning on the meaning of " plant " and the latter on " wear and tear " also. See also Dumbarton Harbour Board *v.* Cox, (1919) 56 S.L.R. 122.

If the machinery or plant is let to the trader on terms of maintenance and return in good condition the hirer is to be deemed owner for the purpose of the rule. Where full effect cannot be given to the claimable deduction in any year it may be carried over and not only when the same person is assessed but also where there is a case of succession to a business (*e.g.*, new company purchasing business of old company, firm, etc.), Scottish Shire Line Limited (Glasgow) *v.* Lethem, (1912) 49 S.L.R. 792. Since the Finance Act, 1907, S. 26, the claim for this deduction is to be included in the annual statement and the additional Commissioners are to make the allowance in assessing (Rule 6 (4) now). If the machinery and plant so let as above is to be maintained and restored at lessor's cost he can claim from the General and Special Commissioners " such a portion of the sum assessed and charged in respect of the machinery or plant and deducted by the lessee on payment of the rent " as the Commissioners consider represents the diminished value during the year due to wear and tear but the claim must be made within 12 months after the year of assessment. Deduction or repayment on account thereof are to cease when the aggregate of allowed deductions equal actual cost, including therein capital expenditure on renewal, improvement, or reinstatement. By Sub-section 7 of the rule any considerable number of persons engaged in a class of trade or business may apply through the Commissioners of Inland Revenue to a " Board of Referees " to alter any rate or amount of deduction and that Board may determine the question. The Board of Referees is to be any Board appointed for purpose of Part III. of Finance (No. 2) Act, 1915, or, if none, a

Board to be appointed for the purpose of the rule by the Treasury.

Rule 7 allows deductions on account of expenditure incurred in any year in replacing obsolete plant or machinery—the amount is to be the cost of the plant or machinery replaced deducting wear and tear allowances under Rule 6 on account of it and its breakup price. When Burnley Steamship Co. *v.* Aikin, (1894) 31 S.L.R. 803, and L.C.C. *v.* Edwards, (1909) 100 L.T. 444, were decided there was no allowance for obsolescence.

As to Patent royalties, see Rule 19 (2) and 21 (1) of General Rules All Schedules. They are not to be deducted but when paid out of profits, the payer deducts and retains tax thereon in recoupment. When not paid out of profits the payer deducts and accounts. As to deduction for life insurance premiums, see S. 32 below (p. 170), this deduction applies to the whole of Schedule D. as well as Schedule E.

Territorial Limits of Charge.

The liability to tax under Cases I. and II. depends on residence in United Kingdom (wherever the trade, etc., is carried on) or on exercising the trade, etc., here (Schedule D. 1 (*a*) (i) (ii) and (iii)). That is the property or the person must be within the jurisdiction. There may still of course be a difficulty in applying the machinery of assessment. But there are extensive provisions to meet any difficulty in this respect. (See General Rules All Schedules, Rules 4 to 6 inclusive).

A person residing here (or deemed to reside here by Rule 3 of General Rules applicable to all Schedules) is taxable on all the profits whencesoever they arise and whether from a trade, profession or vocation. He is "deemed to reside" here if his *ordinary* residence has

been in the United Kingdom and he has left "for the purpose only of occasional residence abroad" (Rule 3 of Rules for all Schedules). But a firm of two or more partners is not deemed to reside here merely by reason of the residence of a partner here or by reason of some of the trading operations of the partnership being conducted within the United Kingdom if the control and management of the trade or business is situate abroad, indeed in such case (by Rule 12 of Rules for Cases I. and II., Schedule D.) the business is to be deemed carried on by persons resident outside the United Kingdom. In this case the partner resident here is assessable on his share of profits under and in accordance with Case V. and the rules thereunder (Colquhoun *v.* Brooks, (1889) 14 App. Cas. 493). So far as the trading operations, conducted in such case within the United Kingdom, are concerned (mentioned in Rule 12 above) the firm deemed resident abroad will be assessable here to the same extent as, and no further than, a person resident abroad is chargeable, in respect of trading operations here, and may be assessed (Rule 12) in the name of the partner resident here (Rule 2 of Miscellaneous rules applicable to Schedule D. is strictly limited by its terms to Cases IV. and V. of Schedule D. and is referred to under those cases).

As to what constitutes residing in the United Kingdom.—The leading case is A.G. *v.* Coote, (1817) 4 Price 183; in effect it decides that if a man has two residences in two different countries (one of them in the United Kingdom), each residence being of a more or less permanent or ordinary character, and he lives for some portion of the year in each, he *prima facie* is "residing in the United Kingdom" within the meaning of what is now Rule 3 of General Rules all Schedules.

A man can reside in more than one place, and domicile is unimportant, in reference to this question, though

(under Rules applicable to Cases IV. and V. of this Schedule) it is made important as an independent question ; " residence " does not depend on domicile.

Later cases are In *re* Young, (1875) 2 R. 925, Rogers *v.* Inland Revenue, (1879) 6 R. 1,109, the wife and family of the assessed appellant, a master mariner, resided here and he had no other residence elsewhere but had not actually been in the United Kingdom during the year of assessment ; he was held to be " residing in the United Kingdom." Contrast this case with Turnbull *v.* Inland Revenue, (1904) 42 S.L.R. 15, in which the appellant ordinarily resided and carried on business in India, and had not been in the United Kingdom at any time during the year of assessment, but maintained a permanent residence here for his wife and children who had lived there through the year ; he was held not to be residing in the United Kingdom. Lord Trayner's statement that the words are not " having a residence in the United Kingdom " but " residing " here, which has been widely quoted, must be qualified by Lord Moncrieff's opinion in the same case and by earlier cases ; the words quoted are clearly not a statement of a principle universally applicable.

In Lloyd *v.* Sulley, (1884) 11 R. 687, the assessed appellant had his house and principal residence in Italy, where he also carried on business, but he had purchased an estate in Scotland, used it year by year as a summer residence, and with his family resided there during the year of assessment for nearly four months, July to October, and he was held to be resident in the United Kingdom. Inland Revenue *v.* Cadwalader, (1904) 42 S.L.R. 117, is similar but the question there was whether an American citizen ordinarily residing and practising as a Barrister in New York, who held a shooting in Scotland for a term of years and was accustomed

to spend two months there every year, could be said to reside for a temporary purpose within S. 39 of Income Tax Act, 1842 (see Rule 2 of Miscellaneous Rules applicable to Schedule D.). In Brown *v.* Burt, (1911) 81 L.J. K.B. 17, a person who had lived for many years aboard his own yacht, anchored near shore in a navigable tidal river, some distance inland from that river's mouth, was held to be resident in the United Kingdom.

The above cases are the authorities where the question is whether an individual is resident in the United Kingdom for the purposes of liability. The same point, residing in the United Kingdom and what constitutes it, has to be determined in the case of an incorporated body, *e.g.*, a company. On this point there are a great number of authorities which have in effect settled the law. Clearly an incorporated body can be resident here. Whether it is or not depends on whether the "control and management" of the concern as a profit-earning concern is exercised in the United Kingdom or abroad. The circumstances that the concern itself is abroad and the profits are earned abroad do not matter if making the profits there is controlled and directed by the board of directors or management here ; San Paulo (Brazilian) Railway Co. *v.* Carter, (1896) A.C. 31, De Beers Consolidated Mines *v.* Howe, (1906) A.C. 455, American Thread Co. *v.* Joyce, (1913) 108 L.T. 353 ; and a Company like an individual may have more than one residence (*ibid*). Nor, given that the management and control is exercised here, does the fact that the Company was registered out of the United Kingdom and has its registered office out of United Kingdom make any difference (New Zealand Shipping Co. *v.* Stephens, (1907) 24 T.L.R. 172).

The principle having now been well nigh settled the earlier cases by which it was gradually built up are com-

paratively unimportant. Cesena Sulphur Co. *v.* Nicholson, (1876) 1 Ex. D. 428, Calcutta Jute Mills Co. *v.* Nicholson, (1876) 1 Ex. D. 428, Imperial Continental Gas Association *v.* Nicholson, (1877) 37 L.T. 717, Goerz *v.* Bell, (1904) 2 K.B. 137, London Bank of Mexico and S.A. *v.* Apthorpe, (1891) 2 Q.B. 378, and Norwich Union Fire Assurance Co. *v.* Magee, (1896) 73 L.T. 773, are some of them.

In Mitchell *v.* Egyptian Hotels Co. Ltd., (1915) A.C. 1,022, the Company was registered here ; it owned two hotels in Egypt and carried on there the business of hotel-keepers ; and that business itself was managed and controlled there also by a local Board of Directors ; the head board in London did not control or manage the business but it kept accounts and declared dividends ; and it was held that since control and management of earning the profits took place in Egypt and only the distribution of profits so earned was dealt with by the head board here it was not resident here. If a Company is resident here within these cases, because it controls from this country the earning of profits abroad, it makes no difference whether it does so by individual or corporate agents. So in Apthorpe *v.* Peter Schoenhofen Brewing Co., (1899) 80 L.T. 395, where a brewery in Illinois was sold by an American Company, which conducted it there, to an English company. But the State of Illinois did not allow alien corporations to hold realty in that State, so the American company was kept on foot to hold the realty, and the shares of the American company (with the exception of three) were transferred to the English company, the purchasers. The manufacture and sale of beer was carried on in Illinois but the English company (as owners of all the shares but three) controlled the business. It was held liable under Case I., consequently on all the profits earned in

America, and not merely on that portion remitted to pay the expenses here and the dividends to shareholders here. So also in St. Louis Breweries *v.* Apthorpe, (1898) 79 L.T. 551. But merely owning the greater part of the share capital and so having a preponderating voice in the management is not enough ; Kodak Ltd. *v.* Clark, (1903) 1 K.B. 505 ; and see Gramophone and Typewriter Co. *v.* Stanley, (1908) 2 K.B. 89, owning the greater part of the share capital does not constitute ownership of the business of that company and does not, of itself, evidence carrying on its trade here.

So when an individual (sole surviving partner and sole owner of the business) resides here and carries on a business abroad by local managers, the absence of interference by the owner in the local management did not countervail the other considerations, viz :—that weekly statements were supplied by them to the owner resident here and that their authority to act was entirely derived from him and the right of control might have been exercised at any moment. The profits were held to be assessable under Case I. of this Schedule (Ogilvie *v.* Inland Revenue, (1908) 45 S.L.R. 725). An individual or corporation resident abroad may however become liable under Schedule D., 1. (*a*)(iii) in respect of profits "from any trade, profession, employment or vocation exercised within the United Kingdom."

"Exercising a Trade within the United Kingdom."—This applies equally whether the person exercising is a Company resident abroad or an individual so resident or a firm deemed resident abroad within Rule 12 of Rules of Cases I. and II., Schedule D. The person must trade "within the United Kingdom and not merely with it" (Grainger *v.* Gough, (1896) A.C. 325); that is, those operations which constitute trading must be conducted here, usually by an agent. Whether the

acts done here amount to "trading within the United Kingdom" depends on all the circumstances but that on which the greatest stress in determining the matter has been laid has been habitually making contracts here. Purchasing goods here for exportation abroad, where sales at a profit were made, was held not enough in Sulley *v.* A.G., (1860) 5 H. & N. 711. Other cases are :— Messages despatched mainly by foreign marine cables of a foreign company, handed in at Post Offices in the United Kingdom and paid for there, Erichsen *v.* Last, (1881) 8 Q.B.D. 414 (liable) ; having an office for an agent here, who sought and obtained orders and effected sales here and received payment therefor, Pommery & Greno *v.* Apthorpe, (1886) 56 L.T. 24 (liable) ; contracts for sale made here by agents, delivery made abroad, goods being conveyed at purchaser's risk some payments made to agents here and some direct to the foreign principal, Werle & Co. *v.* Colquhoun, (1888) 20 Q.B.D. 755 (liable). Canvassing by an agent here for orders which orders were transmitted abroad, the foreign principal there accepting them or not at his discretion, the goods being in all cases consigned from the foreign seat of business, and at consignees' risk therefrom, payment being sometimes made to the agent here, not enough to constitute trading within the United Kingdom ; "in all previous cases contracts have been habitually made in this country." (Lord Herschell) Grainger *v.* Gough, (1896) A.C. 325. This is the leading case. Profits from chartering a ship belonging to a foreign company resident abroad, when the contracts for chartering were made by agents here who received all receipts therefrom and paid disbursements, held exercising a trade here, Wingate *v.* Webber, (1897) 34 S.L.R. 699, and see also Watson *v.* Sandie and Hull, (1898) 1 Q.B. 326.

As to Crookston *v.* Inland Revenue (1911), 48 S.L.R. 134, the second point is no longer law, the first point probably depended on the second. See also Macpherson *v.* Moore, (1912) 49 S.L.R. 979. Tischler *v.* Apthorpe, (1885) 52 L.T. 814, Yokohama Specie Bank *v.* Williams, (1916) 113 L.T. 860, and Weiss, Biheller and Brook, Ltd. *v.* Farmer, (1918) 2 K.B. 725.

The non-resident principal may be charged in the name of the representative in this country. Under the former provisions (S. 41 of Income Tax Act, 1842), the "factor, agent or receiver having the receipt of any profits of gains" was assessable in such a case and the agent was answerable for doing all matters which by the Act are preliminary to assessment and for paying the duty when assessed. Now by Rules 5 and 6 (Rules for all Schedules) the words are "factor, agent, receiver, *branch or manager*" and "whether having receipt of the profits or gains or not" has been added; so that Crookston *v.* Inland Revenue, (1911) 48 S.L.R. 134, on this point is no longer law; further the foreign principal is chargeable, in respect of any profits or gains arising *directly or indirectly* through or from any branch factorship, agency, receivership or management, in the name of the branch, factor, agent, receiver or manager. Only the profits from the trade here are charged.

The person in whose name the non-resident person is chargeable is answerable for all matters to be done under the Act for the purpose of assessment and payment of tax (Rule 13 of Rules for all Schedules) may recoup himself and is entitled to indemnity (Rule 14 of same Rules); where the trade exercised within the United Kingdom is one in which the profits or gains arise from the sale of goods or produce manufactured or produced out of the United Kingdom by the non-resident principal, the branch, manager, agent, factor or receiver here may

apply (Rule 12 of Rules for all Schedules) to be assessed on the basis of profits which might reasonably be expected to have been earned by a *merchant*, or, when the goods are retailed by or on behalf of the manufacturer or producer, by a retailer, of the goods sold, but the profits on that basis must be shown to the Commissioners' satisfaction.

The same Section (S. 31 of the Finance (No. 2) Act 1915) which extended the class of agent through whom a trade, exercised in this country, might entail liability to tax, in respect of the profits derived therefrom, also contained provisions which are now to be found in General Rules applicable to all Schedules in several rules thereunder (Rules 7 to 11) and are dealt with in detail below and are in effect an extension of exercising a trade in this country by a non-resident.

If Grainger *v.* Gough, (1896) A.C. 325 and similar decisions are looked at, it will be seen that the possibility of claiming tax as the law then stood depended on the conduct of the business. The foreign firm might get the full benefit of the English market, might get it continuously, might get it to some extent through and by means of a resident agent, and yet if the commercial exigency of the business did not render it necessary to delegate to the agent here authority to accept offers to buy the principal's goods, to receive purchase money for goods sold, to deliver goods or do other acts essential to the existence of "trading within" as distinct from trading to, or with, this country, and in fact these acts were not performed here, the foreign firm escaped tax. To some extent this was altered independently of the extension now under consideration (see p. 98 above), and these cases have, in some respects, ceased to be applicable. But those are cases where the ordinary course of business has been observed except that care has

been taken to do formally the essential acts outside the jurisdiction.

Rule 7 deals with a different type. But the language of Rule 7 is very vague and the value of the provision depends mainly on the basis of assessment which Rule 8 applies (not only in this case). Profits are to be inferred because none could result from such a mode of dealing and because people do not carry on business (and clearly a business is carried on which is normally profitable) on such lines as effectually prevent any profit accruing to them, but the *quantum* is, or may be, unprovable and so a statutory standard supplies the measure lacking. By Rule 7 where a non-resident person (not being a British subject or a British, Indian, Dominion or Colonial firm or company or branch thereof) carries on business with a resident person and it appears to the Commissioners that, owing to the close connection between them and the substantial control exercised by the non-resident over the resident, the course of business between them can be, and is, so arranged that the business done by the resident, in pursuance of his connection with the non-resident, produces to the resident person less than ordinary, or no, profits, the non-resident person is to be assessed in the name of the resident person as if the latter were his agent. By Rule 8 where it appears to the Commissioners that the true amount of the profits and gains of any non-resident person chargeable with tax in the name of a resident cannot be readily ascertained the Commissioners may assess the non-resident on a percentage of the turnover of the business done by the non-resident through or with the resident in whose name he is chargeable. By Rule 9 (1) this percentage is to depend on the nature of the business and is subject to appeal to General or Special Commissioners (when made by Additional Com-

missioners) and from the General or Special Commissioners to a Referee or Board of Referees to be appointed by the Treasury (his or their decision on the *quantum* of precentage is final, Rule 9 (2)). By Rule 10 nothing in the Rules is to render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent not being an authorized person carrying on the regular agency of the non-resident person, or a person chargeable, as if he were an agent in pursuance of these Rules; nor by Rule 11 are transactions by a non-resident with non-residents (of a character such as if with a resident person would make him chargeable) to make the non-resident person chargeable in respect of those transactions.

The Measure of Profits for the Year of Assessment.

Triennial average taken for three preceding years is the Rule for Cases I. and II. (see Rule applicable to Case I. and Rule applicable to Case II.). As to weekly wage earners, see Rule 2 of Rules applicable to Cases I. and II. Exceptional provisions to meet certain cases are found in Rules applicable to Cases I. and II.; *e.g.*, new business, Rule 1 (2), Rule 8 (1); discontinuance, Rule 8 (2); cesser and succession, Rule 9; change in partnership, Rule 11.

Basis of Assessment.—Under Cases I. and II. profits are to be ascertained on a triennial average.

These profits are taken from three years ending "on that day of the year, immediately preceding the 'year of assessment'" (the year for which tax is to be levied, see S. 237, 6th April in one year to 5th April in next year) on which the accounts of the said trade (S. 237) have been usually made up, or on the 5th day

of April preceding the "year of assessment." Rule applicable to Case I. and Rule applicable to Case II. See Pretoria-Pietersburg Railway Co. *v.* Elwood, (1908) 98 L.T. 741, and Stevens *v.* Durban Roodepoort Gold Mining Co., (1909) 100 L.T. 481, the average extends to credits and debits alike, both must be spread over the three years. It has been pointed out that this average system favours the progressive business and is disadvantageous to a dwindling one. The practice, it is understood, in the case of a new business which starts trading in any year of assessment is to wait for a complete year's trading and then to assess for the first taxable year on the proportion of the profits of the first business year that would be represented by a fraction, of which the numerator is the number of calendar months of the business year in that year of assessment and the denominator is 12, *e.g.*, business year 1st July, 1916, to 30th June, 1917, the assessment for the year of assessment, 6th April, 1916, to 5th April, 1917, would be made some time after 30th June, 1917, and would (roughly) be for nine-twelfths of the profits shewn in the first business year. The second year of assessment would be based on twelve-twelfths, *i.e.*, the whole of the profits of the first business year. For the third year of assessment the average would be taken from the first two business years, and for the fourth year the three years' average prescribed by the Rule would be taken. The law is to be found in Rule 1 (2) of "Rules applicable to Cases I. and II." which as to the first year of assessment directs computation according to Rules applicable to Case VI.

Relief in the case of a trade, etc., "set up or commenced" within the period of three years is afforded by Rule 8 (1) of Rules applicable to Cases I. and II. which allows substitution of the actual profits or gains arising

in the year of assessment for the figure based on the profits or average profits of the period preceding the "year of assessment." The relief is either to substitute charge on the actual profits of the year of assessment instead of on profits computed under the general provisions or, if tax has been paid on the latter basis, repayment: "end of the year of assessment" in this Rule 8 (1) means within a reasonable time thereafter, Rex. *v.* Special Commissioners, *ex parte* Cape Copper Mining Co., (1888) 21 Q.B.D. 313. See also S. 34.

But new management of an old "concern" or conversion of a partnership into a limited company is not starting a new business. The "business" has not been set up or commenced within the period of three years (for average) where it has passed to a different proprietor who continues to carry on what is the same "concern," see Ryhope Coal Co. Ltd. *v.* Foyer, (1881) 7 Q.B.D. 485; but under Rule 11 of Rules applicable to Cases I. and II. there may be a "succession" to the concern and proof may be given to the Commissioners that the profits or gains have fallen or will fall short *from some specific cause* to be alleged since such succession took place or by reason thereof. But what happens? The indication in Ryhope Coal Co. Ltd. *v.* Foyer is that, once the fact is established, since the rules are part of the charge and on the rules ceasing to apply the charge is incomplete, you are remitted to Case VI. and the Rules thereunder, the profits in the year of assessment, or according to an average of such a period being greater or less than a year as the case may require and as may be directed. See as to "Specific cause" below. The question whether a trade is set up or commenced or not within Rule 1 (2) of "Rules applicable to Cases I. and II.," that is whether there has been succession to an old concern or the setting up of a new concern, has been

considered in Alexander Ferguson and Co. Ltd. *v.* Aikin, (1898) 4 Tax Cases 36, Bell *v.* National Provincial Bank of England Ltd., (1904) 1 K.B. 149, Watson Bros. *v.* Lothian, (1902) 39 S.L.R. 604 (mere sale of a chattel) and Stockham *v.* Wallasey U.D.C., (1906) 95 L.T. 834.

The truth is that A. is being taxed not on A's average past income but on B's and he is so taxed because having got B's business it seems no more unreasonable to apply to him the statutory method of average depending on past years than to apply it to B. But clearly that can only apply where B. is successor to the " undertaking " and not merely to some of the elements that go to make it up.

The next provision is where a trade, etc., is discontinued; this is discontinuance by one without succession by another. Rule 8 (2) of Rules applicable to Cases I. and II. applies, the Rule gives a right to be charged only on the actual amount of profits and gains arising in the year of assessment in which the discontinuance occurs. Further, if the tax payer proves to the Commissioners that the tax paid for the three previous years (based of course on the usual method of average) exceeds the sums he would have paid if assessed only on actual profits of each of those three years he is entitled to repayment of the excess. Merely ceasing to carry on part of the business which had been carried on at a loss does not entitle the Commissioners to eliminate that loss in arriving at the triennial average; Highland Railway Co. *v.* Special Commissioners of Income Tax, (1885) 23 S.L.R. 116 (a case under Schedule A., No. III.) Sale of a business to a Company is not discontinuance within this provision, Bartlett *v.* Inland Revenue Commissioners, (1914) 3 K.B. 686.

The next provision is where one person ceases to carry on business but another succeeds him in carrying on

that business. This is dealt with in Rule 9 of Rules applicable to Cases I. and II. Then the Surveyor, within four months from the 5th day of April next after any such change, is to certify to the General Commissioners for the division in which the assessment is made particulars of the assessment, name and residence of person charged (who has ceased to trade), and of his successor, and the date of the change, if known to him. The Commissioners after notice to the predecessor and successor and consideration of the case are to apportion the assessed amount between the two. Their determination is final. The predecessor is relieved from the amount apportioned to the successor. The successor is chargeable with such apportioned amount as if originally assessed on him. If any payment has been made before apportionment by either in excess of the amount which is afterwards apportioned to him the Crown process may be used for recovery from the other of them and the amount when recovered paid over to him.

Both these two provisions relating to discontinuance and to cesser by one person and succession to him by another, are supplemented by Rule 3 of Miscellaneous Rules applicable to Schedule D. This Rule provides that where a person charged under Schedule D. on a computation based on the profits of one year, or on an average of years, ceases to carry on the trade, etc., dies or becomes bankrupt before the end of the year of assessment or from any other "specific cause" is "deprived of or loses the profits or gains so computed" (*i.e.*, has not made *defacto* in that year what the computation based on the past indicated) he or his executors or administrators may within three months after the end of the year of assessment apply to the General Commissioners of the division for the amend-

ment of the assessment and they are to give such relief as is just and if necessary direct repayment of any sum which has been overpaid.

As to what constitutes a "specific cause" see Ryhope Coal Co. Ltd. *v.* Foyer, (1881) 7 Q.B.D. 485 and Inland Revenue *v.* Farie, (1878) 16 S.L.R. 189; payment of excess profits duty is not a specific cause, see Rule 4 (2) of Rules for Cases I. and II., Schedule D.: see as to the War S. 43 (p. 178). If the Commissioners, when applied to, hold there has or has not been a "specific cause" their decision is not appealable, for the application for relief, which is the occasion of their decision, is not an appeal and the Commissioners have no power to state a case, Bruce *v.* Burton, (1901) 85 L.T. 227 and Furtado *v.* City of London Brewery Co. Ltd., (1914) 1 K.B. 709 (see now S. 149).

Subsection 3 of this Rule 3 (Miscellaneous Rules applicable to Schedule D.) provides that a person who has succeeded to the trade, etc., of a person charged shall subject to the provisions of Rule 9 of Rules applicable to Cases I. and II. (dealt with above) be liable to pay the full tax charged without any new assessment and no relief under this Rule shall be granted in any such case unless the person so succeeding proves to the satisfaction of the Commissioners that the profits and gains have fallen short from some "specific cause" since or by reason of the succession (these words appear to refer to Rule 11. of Rules applicable to Cases I. and II. below).

The next provision (Rule 10 of Rules applicable to Cases I. and II.) deals with a trade or profession carried on by two or more persons jointly. In Farrell *v.* Sunderland Steamship Co., (1903) 88 L.T. 741, where a company owned all the shares in one ship and fifty-nine sixty-fourths of another, it was held there must be two

assessments. The tax is to be computed in one sum, a joint assessment in the partnership name, and to be separate and distinct from any other tax chargeable on those persons or any of them. The obligation to deliver the "return" is on the "precedent" partner resident in the United Kingdom (*i.e.*, who is first named in the agreement of partnership or if there is no such agreement is "named singly or with precedence to the other partners in the usual name of the firm," or is the precedent acting partner if the person named with precedence is not an acting partner), and this return in addition to the profits and gains must declare the names and residences of the other partners. Where no partner is resident in the United Kingdom the statement is to be made by the agent, manager or factor of the firm resident in the United Kingdom. The Commissioners are however entitled to call for a statement similar to that required from the "precedent partner" from every partner.

By Rule 11 of Rules applicable to Cases I. and II., if within the year of assessment or period of average upon which the assessment is to be based, a change occurs in a partnership of persons engaged in any trade or profession by reason of death or dissolution of the partnership as to all or any of the partners or by admission of a new partner or if any person succeeds to a trade or profession the tax payable is nevertheless to be computed, in effect, as though there had been no change or succession, unless proof is given to the Commissioners that the profits or gains have fallen or will fall short from some "specific cause" alleged to them since such change or succession took place or by reason thereof (see Rule 9 of these Rules applicable to Cases I. and II. above).

Some concerns require special mention and are therefore referred to specifically.

Life Assurance.

This business is the subject of special provisions in the Act. Formerly a company carrying on fire and life business, or marine, fire and life, was assessable on the net profits of all the different branches combined; now by Rule 15 (1) of the Rules for Cases I. and II., the life assurance business is for the purposes of the Act to be treated as a separate business (the previous provision is S. 11 of Finance Act, 1915). The law before the enactment of S. 11 of the Finance Act, 1915, is to be found in Last *v.* London Assurance Corporation, (1884) 12 Q.B.D. 389 and Scottish Union and National Insurance Co. *v.* Smiles, (1889) 26 S.L.R. 330.

When any "person" is assessable either under one Schedule or another, or under one or other "case" of the same Schedule, the Crown can, in general, elect to tax under whichever is the more profitable to the revenue. Accordingly an Insurance Company which has, from the nature of its business, large investments to meet future liabilities may be assessed under Schedule D., Case I., on profits or under other Cases of that Schedule, or under any other Schedule applicable in respect of the interest and dividends from its investments. In the case of an Insurance Company residing in England (*i.e.*, if the business is controlled by a directorate here) the tax, if assessed under Case I. of Schedule D. is on profits wherever made, and profits involve deduction of management and other expenses, but if the Crown elected to tax under *e.g.* Case IV. of the same Schedule or under Schedule C. tax was formerly leviable on the dividends and interest from the securities and investments without any allowance of, or deduction for, expenses. On the other hand, if in the case of a company the tax was taken on profits it was sufficient that

they were earned, no matter where; while if the tax was taken on interest and dividends from foreign securities or possessions they had (if arising abroad) to be remitted to this country to be taxable. The changes made generally under Cases IV. and V. of Schedule D. place on an exceptional basis income arising from "securities" and "possessions" in any place "out of the United Kingdom" which form part of the investments of the foreign life assurance fund of an Assurance Company (for definitions of these terms see S. 237). Tax is only to be under Case IV. on the sums which have been or will be received in the United Kingdom in the year of assessment (Rule 2 (*b*) of Rules applicable to Case IV. of Schedule D.) and under Case V. on the basis of Rule 2 instead of Rule 1 of that Case (see below Cases IV. and V.). If the Company was charged on profits (Case I. of Schedule D.) it must include in these profits income from investments which, as a matter of legal necessity or business expediency, are employed in the business, as distinguished from mere investments not so employed. If the income is "fruit derived from a fund employed and risked in a business" (Buckley L.J. in C.A., cited with approval by Lord Loreburn in House of Lords, in Liverpool and London and Globe Insurance Co. *v.* Bennett, (1913) A.C. 610) it forms part of the profits. In that case there were investments required by law to be deposited as a condition precedent to carrying on a fire insurance business abroad and other investments voluntarily made out of accumulated profits so as to have a fund easily realizable if required, the Court held all these investments were assets employed in the business, retained for the purpose of the business, but temporarily invested so as not to lie idle. So in Norwich Union Fire Insurance Co. *v.* Magee, (1896) 73 L.T. 733, the distinction was drawn between invest-

ments made for the sake of investment and for the sake of making business profit, "the Company could not carry on or so profitably carry on the insurance business without these investments as reserves." On this point Rule 15 (2) of Rules applicable to Cases I. and II. provides that to ascertain whether an assurance company has sustained a loss on its life insurance business, and to set off such loss against profits of any other business carried on by the Company, etc., any income of the Company derived from investments of the life insurance fund is to be treated as part of the profits of the Company acquired in that business. By S. 33 (set out p. 173) relief by way of repayment can be given in respect of management expenses, where a Life Assurance Company (and certain other bodies) has been assessed on interest and dividends instead of on profits (Case I. of Schedule D.) but this relief is not to be given so as to make the tax levied on the dividends, etc. (with the allowance of management expenses) less than the amount which would have been charged if the Company had been assessed on "profits"; see the Section for other provisions as to deduction of profits from reversions from expenses of management, and the deduction from the profits from reversions in one year of loss therefrom in any previous year. The case of an insurance company not having its head office in the United Kingdom, but carrying on life assurance business through any branch or agency there, is dealt with in Rule 3 of Rules applicable to Case III. of Schedule D. and S. 33 (4) and (5) deals with relief in respect of expenses of management in such a case (annuity fund is defined in S. 237). Also by S. 46 (3) where securities are issued free from tax (so long as they are not beneficially owned by persons ordinarily resident here) if they are bought out of income arising abroad from investments of the foreign life

assurance fund of an Assurance Company remitted to United Kingdom, as part of the investments of that fund, that income is not to be liable to a tax, and any tax paid thereon is to be repaid to the company. By Rule 21 (3) of the General Rules applicable to all Schedules, the amount of annuities which an Assurance Company carrying on the business of granting annuities is entitled, for the purpose of that Rule, to treat as having been paid out of profits or gains brought into charge to tax, is not to exceed the amount of the taxed income of its annuity fund (defined in S. 237). This provision implies that the insurance company *is* entitled to treat the annuities as paid out of profits. (See next page). But Gresham Life Assurance Co. *v.* Styles, (1892) A.C. 309 shows that, to estimate profits from such a business, sums paid in respect of these annuities are the disbursements which earn profits (*i.e.*, the excess of receipts for premiums or purchase money over payments) if these receipts are greater than the payments the annuities cannot be treated as paid out of profits and the provision is inapplicable. An example of the working out of an assessment in such a case is afforded by the recent case of Hancock *v.* General Reversionary and Investment Co., (1919) 1 K.B. 25.

The Rule reproduces S. 13 of the Finance Act 1915, passed in consequence of Edinburgh Life Assurance Co. *v.* Lord Advocate, (1910) A.C. 143.

As regards Mutual Insurance Societies, in New York Life Insurance Co. *v.* Styles, (1889) 14 App. Cas. 381, the only members were participating policy holders and it was held there were no profits and no business ; merely a distribution of contributions made to a common fund or an adjustment between the members *inter se* of the amount they were to pay pursuant to their terms of assurance. On the other hand in Last *v.* London

Assurance Corporation, (1885) 10 App. Cas. 438, and in Equitable Life Assurance Society of United States *v.* Bishop, (1900) 1 Q.B. 177, where there were shareholders, as well as participating policy holders, it was held that there was a Company, a distinct entity, making profits not from its own members but from those it dealt with, the participating policy holders, and though it returned two-thirds of those profits to those it dealt with, they were not the less profits. Lord Bramwell thought the profits were only what remained after the return they had agreed to make (the two-thirds), viz., what was divisible among the shareholders.

The policies of a life insurance business are variable unexpired risks only capable of actuarial estimation and so to be estimated. If the life assurance business extends to granting annuities (and "life assurance business" where used in the Act includes granting annuities, S. 237) then those annuities are part of the expenditure and deductible to ascertain profits, Gresham Life Assurance Co. *v.* Styles, (1892) A.C. 309, and where so deducted and tax paid on the profits so ascertained the insurance company must deduct income tax when paying over the annuities and account for the tax to the Crown, see Hancock *v.* General Reversionary and Investment Co. Ltd., (1919) 1 K.B. 25 and Rules 19 and 21 of General Rules for all Schedules (pp. 138 and 139).

Fire Insurance.

To ascertain the profits of a fire insurance office for the purpose of income tax, the cases are:—Imperial Fire Insurance Co. *v.* Wilson, (1876) 35 L.T. 271, Scottish Union and National Insurance Co. *v.* Smiles, (1889) 26 S.L.R. 330. Northern Assurance Co. *v.* Russell, (1889) 26 S.L.R. 330, General Accident Fire and Life

Assurance Corp. *v.* McGowan, (1908) A.C. 207, and Sun Insurance Office *v.* Clark, (1912) A.C. 443. The Sun case in effect settled the law. The premium income for a year represents contracts made at different times. It follows that unexpired risks on some of these contracts are outstanding at the end of the year and to that extent the premium paid in that year may properly be described as "unearned." To add together the premiums received in each year and to add together and deduct from the total of the premiums the losses on these contracts is not possible at the period of time at which the assessment to income tax must be made. This is true of ordinary yearly contracts and there are also cases in which for a single premium a fire risk is covered for five or six years. Since, then, under the income tax machinery, you cannot take the actual facts of business done and pecuniary results of it during the year, the question is how most nearly to approximate to that result. (1) To take each contract of insurance separately is admittedly impracticable. (2) To take the sum total of premiums received in a year and subtract from them the sum total of losses paid during that year (*i.e.*, irrespective of when the contract was made and premiums earned) might be unfair in the case of a rapidly increasing or rapidly diminishing fire insurance business and is neither precise nor scientific; but, if it is shown to produce in its application a result which (where tested by dividends actually distributed and calculations of profits on which dividends are declared) is more satisfactory than any other method would give, it may be adopted, and it is in general a good working rule, though it may or ought to be superseded if it is shown to produce an apparent trade profit which the facts show was not really earned or treated as earned by the company. And in that case

a third method (or any other that may be suggested as producing the nearest approximation to the true profits) may and should be adopted; that third method is to carry forward annually a percentage of premiums income to allow for unexpired risks. Clearly no one method must, as a matter of law, be applied, it is a question of evidence which method results in the nearest approach to a true mercantile estimate of profits having due regard to the statutory provisions for calculating them.

Trading in Land.

A mere sale of property at an advance over the price paid for it does not fall within the Act. It is an isolated transaction and a casual profit, *i.e.*, not "annual" within the charge and the terms of no Schedule touch it. But if the sale is an incident in carrying on a business there is no reason why this profit may not be said, like any other, to arise from that business and to be taxable as part of the business profits and the man who is accustomed to acquire land to develop and to resell, or to resell without development, certainly carries on a taxable business though it may not always be easy to estimate the profits (see *e.g.* Inland Revenue *v.* Cardonald Feuing Co. Ltd., (1906) 44 S.L.R. 66) nor to say whether the circumstances attendant on realization constitute the carrying on of a business (see Assets Co. Ltd. *v.* Forbes, (1897) 34 S.L.R. 486—no decision as case did not afford sufficient data). In Stevens *v.* Hudson's Bay Co., (1909) 101 L.T. 96, realizations of land were treated in the circumstances as constituting neither a business of itself nor an adjunct of the other "concern" of the company—a mere conversion of capital into cash and a distribution of this cash among shareholders. In Tebrau Rubber Syndicate Ltd. *v.*

Farmer, (1910) 47 S.L.R. 816, the business of the company contemplated development and ultimately sale of the properties acquired and meanwhile manufacturing and trading in the rubber produced. The company however found their capital inadequate to continue development and sold the whole undertaking, as it happened, at a price which showed a profit over the cost of acquisition and development: in effect the decision was that, in the circumstances, there was a mere realization of assets.

Investment Companies.

These usually include amongst their business the buying and selling of investments and the gains resulting from realization in such circumstances constitute profits within the Act (Scottish Investment Trust Co. *v.* Inland Revenue, (1893) 31 S.L.R. 219, Assets Co. *v.* Forbes, (1897) 34 S.L.R. 486, Californian Copper Syndicate *v.* Inland Revenue, (1904) 41 S.L.R. 691).

If the business consists mainly of making investments (*i.e.*, the raising of loan capital to invest at a higher rate) and the Crown elects to charge it on its dividends and interest by deduction or otherwise, instead of on its profits under Case I. of Schedule D., then the company is entitled to repayment of as much tax paid as would equal the tax on management expenses (including commissions); see S. 33 for the full provisions.

Case III.—This case deals with most of those taxable profits or gains mentioned in 1 (*b*) of Schedule D., viz.:—

"All interest of money, annuities, and other annual profits or gains not charged under Schedule A, B, C, or E,

and not specially exempted from tax." That paragraph does not expressly make the charge to tax depend on locality either of person to receive or of profits to be received and 1 (*a*) of Rules applicable to Case III. extends tax to "any interest of money . . . . annuity or other annual payment *whether such payment is payable within or out of the United Kingdom.*" If the hand to pay is here, or the hand to receive payment, the tax *may* attach. If the hand to pay is here the case is one of "taxation at the source" (*see* Rules 19 and 21 General Rules applicable to all Schedules (p. 138) and Rule 7 of Miscellaneous Rules Schedule D.).

This Rule 7 provides that (1) where (*a*) any interest, dividends, or other annual payments payable in respect of the stocks, funds, shares, or securities of any foreign or colonial company, society, adventure, or concern, or (*b*) any annuities, pensions, or other annual sums payable out of the funds of any institution in India, are entrusted *to any person in the United Kingdom for payment to any persons in the United Kingdom*, the same shall be assessed and charged to tax under this Schedule by the Special Commissioners. (2) All the provisions of Schedule C. relating to the tax to be charged on dividends payable out of any public revenue other than that of United Kingdom and intrusted to any person (other than the National Debt Commissioners or the Bank of England or Bank of Ireland) for payment *to any persons in the United Kingdom* shall extend to the tax to be assessed and charged under this rule.

(3) Any person who, acting in relation to dividends chargeable under the aforesaid provisions of Schedule C. would be deemed to be a person intrusted with the payment of such dividends, shall, if acting in relation to sums chargeable under this rule be deemed to be a person intrusted with the payment thereof.

Rules Applicable to Case III.

Rule 1 states the scope of the tax under Case III. :—

1. The tax shall extend to :—

(*a*) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods ;

(*b*) all discounts ;

(*c*) profits on securities bearing interest payable out of the public revenue other than such as are charged under Schedule C ;

(*d*) interest, annuities, dividends and shares of annuities payable out of any public revenue where the half-yearly payments in respect thereof do not exceed fifty shillings and are not chargeable under Schedule C ;

(*e*) interest paid or credited in full without deduction of tax by any savings bank to any depositor ;

(*f*) interest on any Exchequer bonds issued under the authority of the Treasury during the continuance of the present war and a period of six months thereafter and on any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending those Acts, in cases where such interest is paid without deduction of tax.

Note also S. 49 (1) and (2) *infra*.

Rule 6 of the Miscellaneous Rules, Schedule D., needs a reference in relation to this case : by it where any creditor on any rates or assessments not chargeable as profits is entitled to any interest of money the proper officer having the management of the accounts may be

charged with the tax payable thereon . . . . as if the rates or assessments were profits chargeable to tax and shall in like manner be indemnified. (*See* A.G. *v.* L.C.C., (1907) A.C. 131). The terms of (1) (*a*) do not extend to payments in the nature of rent (Hill *v.* Gregory, (1912) 2 K.B. 61).

As to "annuities," *see* Cases under Schedule C. and cases cited below, p. 144.

"Yearly interest of money, annuity or other annual payment" (*see* Rules applicable to all Schedules. Rule 19) and any "interest of money, annuity or other annual payment charged with tax under Schedule D." (*see ibid.*, Rule 21) are taxed at the source, *i.e.*, by the person paying them deducting tax and either accounting for it to the Crown or recouping himself for the tax levied on the "profits" (taxed under any Schedule) out of which the payment has been made (*see* on "taxation at source," p. 140). Where the yearly interest, annuity or annual payment is paid wholly out of profits no assessment is (Rule 19 *supra*) to be made on the person entitled to such interest, annuity, etc. Cases in which the payee was held to be assessable where the payer omitted to deduct duty are Leeds Benefit Building Society *v.* Mallandaine, (1897) 2 Q.B. 402, and Glamorgan Quarter Sessions *v.* Wilson, (1910) 1 K.B. 725.

Rule 2 gives the measure for taxation—it is no longer as in Cases I. and II. the triennial average but "the full amount" arising within the year ending on that day of the year preceding the year of assessment on which the accounts are usually made up or on the 5th day of April preceding the year of assessment "and is to be paid on the amount without any deduction."

Rule 3 of this case deals with the special case of an Assurance Company. If an Assurance company not having its head office in the United Kingdom carries on

life assurance business through any branch or agency in the United Kingdom any income of the company from the investments of its life assurance fund (excluding the annuity fund, if any, for definitions see S. 237, p. 213) shall be deemed to be profits comprised in this Schedule and shall be charged under this case. But only to the following extent :—Divide the income from all investments of life assurance fund for the year preceding the year of assessment, in the same proportion as premium income, from policy holders resident in United Kingdom and policy holders resident abroad whose proposals are made to company through its office or agency here, bears to the total premium income of company for that year. The proportion corresponding to that borne by the company's premium income received from English residents and English proposals is to be charged to tax as profits. But if the assurance company has its head office in any British possession the Commissioners of Inland Revenue may by regulation substitute some other basis. Under this Rule the charge is to be made by the Special Commissioners. Where a company has already been charged to tax by deduction or otherwise in respect of its life assurance business to an amount equal to or exceeding the charge under this Rule, no further charge is to be made under this Rule, but when a company has already been so charged but to a less amount the charge shall be proportionately reduced.

By Rule 4 if the Commissioners find that lands which have been charged under Schedule B. on the assessable value and which are occupied by a dealer in cattle, or a dealer in or a seller of milk, are insufficient for the keep of the cattle brought on to the land, so that the assessable value affords no just estimate of the profits, they may require a statement of the profits to be delivered and charge such further sums thereon as together

with the charge under Schedule B. will make up the full sum wherewith the dealer or seller ought to be charged in respect of the like amount of profits charged according to Rule 2 (*i.e.*, full amount arising within the year preceding year of assessment) of these Rules applicable to Case III.

CASE IV.

Income from foreign "securities" (except such as is charged under Schedule C.)

The main distinction appears to be that Schedule C. contemplates securities "payable in the United Kingdom," and then only if payable out of any public revenue. Case IV. not payable here but abroad whether out of a public revenue or not. The word securities must be construed strictly, it does not extend to shares (Singer *v.* Williams, (1918) 2 K.B. 132, and earlier cases therein referred to). Cases occur in which income falls within Case I. and Case IV. and the Crown can elect under which case to tax (Liverpool and London and Globe Insurance Co. *v.* Bennett, (1913) A.C. 610, and cases therein cited). If the Crown elects to tax under Case I. income from securities may be, and not infrequently is to be, included in the trade profits, *i.e.*, when making or holding the investments forms in truth part of the business the profits of which are taxed (Liverpool and London and Globe Insurance Co. *v.* Bennett (*ubi supra*)). Case IV. was considerably altered in scope by S. 5 of the Finance Act, 1914 (4 & 5 Geo. 5 Ch. 10). Reading Rules 1 and 2 of the Rules applicable to Case IV. together and reading with them Rule 2 of Miscellaneous Rules applicable to Schedule D. (a Rule which in terms ("possessions or securities out of the

United Kingdom") appears not *generally* applicable but only to Cases IV. and V.—it is curious that it should be included in a body of Rules "applicable to Schedule D."), the effect is this:—To constitute residing in the United Kingdom for the purpose of this Case it is not enough that a person is in the United Kingdom for some temporary purpose only, and not with a view or intent of establishing his residence therein, unless he has actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment. But residence here for such six months makes him chargeable for that year. This is "residence" and, as stated, clearly points to Case IV., yet Case IV. speaks of *ordinary* residence which is not *necessarily* denoted by a continuous six months' stay much less by broken periods amounting to six months. Subject to this, income from foreign securities is no longer taxable only on the amount which "has been or will be received in the United Kingdom in the current year" as the law stood before S. 5 of the Finance Act, 1914, but "on the full amount thereof arising in the year of assessment whether the income has been or will be received in the United Kingdom or not" subject in the case of income not received in the United Kingdom to the same deductions and allowances as if it had and to deduction of income tax in the place where the income has arisen and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom. But if the person entitled to the income is not domiciled in the United Kingdom, or, being a British subject, is not *ordinarily* resident in the United Kingdom he is only liable in respect of such income (from foreign securities within this case) as has been or will be received in the United Kingdom in the

year of assessment. That is to say the law as it stood before S. 5 of the Finance Act, 1914, is as to such persons retained. The Commissioners of Inland Revenue must be satisfied on the points of domicile or ordinary residence, whichever is relied on, but if the Commissioners of Inland Revenue decide against him on either of these points a right is given by Rule 3 of these Rules to have a case stated by the Commissioners of Inland Revenue on the question and the provisions applicable to a case stated under S. 149 of this Act apply to such a case when stated. As to the former law still retained in these cases (neither domicile nor ordinary residence here) when duty is on the sums which have been or will be received in United Kingdom in the year of assessment (the doctrine of "constructive" receipt is exploded), there must be actual receipt in this country (Gresham Life Assurance Society *v.* Bishop, (1902) A.C. 287). There are earlier cases, Forbes *v.* Scottish Provident Institution, (1895) 33 S.L.R. 228, Standard Life Assurance Co. *v.* Allan, (1901) 38 S.L.R. 628, and a later case, Scottish Widows' Fund *v.* Farmer, (1909) S.C. 1,372. The Rule applicable in these cases says "without deduction or abatement" but since most payments that would be claimed as deductions would be made before remitting and the tax is only on the amount received here, in effect the terms of the tax give the advantage not only of "deductions" proper but of any payments for any purpose made abroad which diminish the amount remitted. If remittances here are part capital and part income, see Scottish Provident Institution *v.* Allan (1903) A.C. 129. The circumstance that the sum, being interest from foreign securities, was earned during a year prior to the year of assessment does not exclude it from charge, if it is remitted during a subsequent year it is taxable

in that year (Scottish Provident Institution *v.* Farmer, (1912) S.C. 452). The same Rule applies to income arising from foreign "securities" which form part of the investments of the foreign life assurance fund of an assurance company (both defined in S. 237). That is to say the old Rule applies to them, not the new (Rule 2 (*b*) of Rules applicable to Case IV.).

Case V.—Income arising from "possessions" out of the United Kingdom. "Possessions" denote everything that a person has as a source of income (Colquhoun *v.* Brooks, (1889) 14 App. Cas. 493, and see the recent case of Drummond *v.* Collins, (1915) A.C. 1,011). Profits of a concern carried on abroad by a Company resident here, *i.e.*, controlling in this country the management of the concern abroad, fall within Case I. (*see* above). The rules applicable to Case V. make two distinctions: (1) foreign stocks, shares and rents are distinguished from other foreign possessions, (2) the rule as to stocks, shares and rents is not to apply in certain excepted cases.

As to foreign stocks, shares and rents the income is to be computed on an average of the three preceding years as directed in Case I. whether the income has been or will be received in the United Kingdom or not, subject, as to income not received here, to the same deductions and allowances as in Rule 1 Case IV. (same deductions as if it had been so received, the foreign income tax and deduction of any annual payment thereout to a person not resident in United Kingdom) (Rule 1).

As to income from foreign possessions, other than stocks, shares and rents, tax is to be computed on "the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from

money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money, or value, brought or to be brought into the United Kingdom, on an average of the three preceding years as directed in Case I. without any deductions or abatement other than is therein allowed (Rule 2).

Rule 3 provides that Rule 1 is not to apply to a person not domiciled, or being a British subject not ordinarily resident, in United Kingdom, nor to any such income (from foreign stocks, shares or rents) arising from the investments of the foreign life assurance fund of an Assurance Company, and in these exceptional cases Rule 2 is to apply. But where trustees hold shares in a foreign Company on behalf of a foreign subject domiciled abroad the fact that they are themselves domiciled and resident in the United Kingdom does not make dividends on those shares not remitted to this country but paid direct to the beneficiary abroad chargeable to income tax (Williams *v.* Singer, (1918) 2 K.B. 749). An appeal lies against a determination of the Commissioners of Inland Revenue on a question of domicile or residence with a right to have a case stated on a point of law (as in Rule 3 of Case IV.) by Rule 4 of Rules applicable to Case V. Rule 2 of "Miscellaneous rules applicable to Schedule D" has been referred to under Case IV.—it applies, as there stated, to Cases IV. and V.

CASE VI.

Tax in respect of any annual profits or gains not falling under the preceding cases and not charged by virtue of any other Schedule. It is the residuary charge. As to its scope *see* A. G. *v.* Black, (1871) L.R. 6 Ex. 308, A. G. *v.* Scott, (1873) 28 L.T. 302, Humber Conservancy Board *v.*

Bater, (1914) 3 K.B. 449, Turton *v.* Cooper, (1905) 92 L.T. 862, Duncan's Trustees *v.* Farmer, (1909) 46 S.L.R. 857, Ryhope Coal Co. *v.* Foyer, (1881) 7 Q.B.D. 485. See also the very recent case of Malcolm *v.* Lockhart (H.L. not yet reported) referred to above under Schedule B. By Rule 2 of Rules applicable to Case VI. the computation is to be made either on the full amount of the profits or gains arising in the year of assessment or according to an average of such a period, being greater or less than one year, as the case may require and as may be directed by the Commissioners. See also S. 211 (1) and Bowles *v.* Bank of England, (1913) 1 Ch. 57 at p. 90 for the case of dividends not charged before the passing of the Annual Act.

Exemptions from Tax under Schedule D.

By S. 37 (*b*) exemption is given in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only or which according to the rules or regulations, etc., are applicable to and applied for charitable purposes only (*see* above, p. 32, citing Pemsel's Case, (1891) A.C. 531).

By S. 39 exemption from Schedule D. is conferred on :—

1. Unregistered friendly societies whose income does not exceed £160, and registered friendly societies on certain conditions (*see* Schedule C., pp. 65–68, where they are set out).

2. A registered trade union on certain conditions (*ibid.*).

3. Savings Banks certified under Savings Bank Act, 1863, in respect of interest or dividends from investments with the National Debt Commissioners and any

Savings Bank in respect of income of its funds so far as applied for interest to depositors (the depositor is to be charged under Case III. of Schedule D. unless his income does not exceed £130) and *see* S. 39 (3) (*b*) (ii) as to obligation on Savings Bank to make certain returns to the Surveyor.

4. Societies registered under the Industrial and Provident Societies Act, 1893, unless they sell to non-members, etc.

5 and 6. Approved Societies, branches thereof, Insurance Commissioners and Committees under National Insurance Acts, 1911, etc.

As to all these exemptions proof is to be made to Special Commissioners, and within three years after end of year of assessment to which the claim relates.

Place of Assessment.

By Rule 4 of Miscellaneous Rules applicable to Schedule D. :—

Person engaged in trade, profession, employment, or vocation carried on wholly or in part within United Kingdom, and whether engaged in one or more concerns.	Parish where trade, etc., carried on or where he ordinarily resides.
Unless the trade consists in the manufacture of goods, wares, and merchandise, then—	Place of manufacture (though sales made elsewhere) or where he ordinarily resides.
Householder not engaged in trade, employment, etc.	Parish where his dwelling house is or where he ordinarily resides (if two or more ordinary residences, at either of them).
Person neither householder nor engaged in trade, etc., who has a place of ordinary residence.	Parish in which he ordinarily resides.
"Every other person not hereinbefore described."	Parish of residence at time of issue of general notices under the Act or where he first comes to reside after that time.

Removal from the parish after assessment does not affect the assessment. To ascertain the proper parish for assessment the list and statement under the Act is to add a signed declaration where the person is chargeable, whether he is or is not engaged in trade, etc., and where, with particulars and (by Rule 5) where a person has two residences or exercises a trade, etc., in different parishes, or in a parish in which he does not ordinarily reside, the Commissioners may require him to deliver the like lists, declarations and statements in each parish, but there is to be no double charge.

SCHEDULE E.

Under this Schedule income tax is charged—"for every 20s. of the annual amount thereof"—in respect of public offices and employments of profit and in respect of every annuity, pension, or stipend payable by the Crown or out of the public Revenue of the United Kingdom—other than annuities charged under Schedule C. (Schedule E. and Section 1 of Act). The scope of the charge in respect of public offices and employments of profit appears from Rule 6 of Rules applicable to Schedule E.

6. The tax shall be paid in respect of all the public offices and employments of profit within the United Kingdom or by the officers hereinafter respectively described, namely :—

(*a*) Offices belonging to either House of Parliament.

(*b*) Offices belonging to any court of justice in the United Kingdom, whether civil, criminal, ecclesiastical, naval, military, or air-force.

(*c*) Public offices under the civil government of the Crown, or in any county palatine, or the Duchy of Cornwall.

(*d*) Officers in His Majesty's navy.

(*e*) Commissioned Officers in His Majesty's military forces.

(*f*) Commissioned officers in His Majesty's air force.

(*g*) Offices or employments of profit under any ecclesiastical body.

(*h*) Offices or employments of profit under any company or society, whether corporate or not corporate.

(*i*) Offices or employments of profit under any public institution, or on any public foundation of whatever nature, or for whatever purpose established.

(*j*) Offices or employments of profit under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls, or duties.

(*k*) All other public offices, or employments of profit which are of a public nature.

On language corresponding to that of Rule 6 (*ad init.*) and of Rule 18 (2) of the rules under this Schedule it was held, in Pickles *v.* Foster, (1913) 1 K.B. 174, that a person, employed by a limited company, whose head office was in England, to serve them as their agent in West Africa, where they carried on a trading business, and whose employment and salary commenced when leaving England for West Africa and continued until the date of giving up charge of the agency in West Africa, was not taxable in respect of his salary as such agent under this Schedule: that employments exercised wholly out of the United Kingdom are not in general within Rule 6. The employment by the Company was not employment under a "department" within (what is now) Rule 18 (2). Employés of Companies as distinguished from employés of private firms are in general taxable under Schedule E.; this does not hold entirely. Engine drivers, porters, labourers, employed by a Railway Company, are chargeable under Schedule D. (A.G. *v.* L. and Y. Railway Co.,

(1864) 2 H. and C. 792) a Fellow of a College is a corporator and not within Schedule E., though a bursar of a College paid a salary out of the College funds is within it — Langston *v.* Glasson, (1891) 1 Q.B. 567. Employés of private firms are chargeable under Schedule D. Ministers of the Established Church are chargeable under this Schedule, Ministers of Nonconformist bodies under Schedule D., in respect of their emoluments as such. If the office or employment of profit is within this Schedule then all emoluments of that office or employment must be taxed under this Schedule or, if not within the ambit of its rules, can be taxed under no other (Tennant *v.* Smith, (1892) A.C. 150). This is an exception to the general principle that what the Crown cannot reach under one Schedule, read with its rules, it can reach under another the terms of which are more extensive and capable of bringing the particular source of income into charge.

Speaking generally every profitable incident of the "public office or employment" is swept into charge. The tax is "in respect of all salaries, fees, wages, perquisites, or profits for the year of assessment except as otherwise provided" (Rule 1 of rules applicable to Schedule E.) after deducting duties or sums payable "*by virtue of* any Act of Parliament where the same have been *really and bona fide paid and borne* by the party charged" (Rule 1). These words still appear, they were in S. 146 (1) of Income Tax Act, 1842. Probably they referred to duties, imposed at that date, by statutes since repealed; their repetition here cannot of course be so explained. In Hudson *v.* Gribble, Bell *v.* Gribble, (1903) 1 K.B. 517, the Court of Appeal held that deductions from salary under a provident fund scheme sanctioned by Act of Parliament were not payable "by virtue of" that sanctioning Act but "by virtue of" the

employé's voluntary contract to enter the service and as a consequence to accept the superannuation scheme. The decision turned necessarily on the construction of the particular Statute and the scheme it authorised. The object of the Statute there in question was not to compel contributions, but to authorise the Corporation of Manchester to establish the scheme and contribute to the fund; so far as the employés were concerned they were offered employment on terms, one being contribution to the fund, and they voluntarily accepted it on those terms and further their contributions were, as the Court held, not "really and *bona fide* paid and borne," within the language of this rule, because payment to them of the sums retained was deferred only and the employés were ultimately to receive back the sums deducted with interest. If this deduction had been claimable under the rule (now Rule 1 above) the Court also thought a large part of S. 54 of the Income Tax Act, 1853, would have been needless (*see* S. 32 of this Act). In Beaumont *v.* Bowers, (1900) 2 Q.B. 254, contributions by a clerk to the guardians of a Union under the Poor Law Officers Superannuation Act were held deductible. That case is not overruled by Hudson *v.* Gribble though its authority is impaired. In Smyth *v.* Stretton, (1904) 90 L.T. 756, a sum annually placed to the credit of the person assessed which was to be paid to him on leaving, on certain conditions, the salaried employment, was held to be taxable income. Here the contention was there was no liability to tax in respect of the additional sum, not as in Hudson *v.* Gribble, that the original liability was to be diminished by deduction under Rule 1. See also Walker *v.* Reith, (1906) 43 S.L.R. 245. "Perquisites" are defined by Rule 4 (3) as "such profits as arise in the course of exercising an office or employment from fees or other emoluments."

This language differs somewhat from that of the 4th rule of Schedule E. (S. 146) of the Income Tax Act, 1842, *cf.* Tennant *v.* Smith, (1892) A.C. 150. In that case it was held that where the holder of an office had the right and duty (as a term of his service) to reside on the bank premises rent free such right, not being money, or capable of being converted into money by letting to someone else, was not within the charge in that Schedule; and see I.R. *v.* Sutherland, (1894) 31 S.L.R. 630, and I.R. *v.* Fry, (1895) 32 S.L.R. 341. "Arising in the course of exercising an office or employment"; these words, part of the definition given above of "perquisites," and connoted by that term, lie at the root of several decisions on the liability of clergymen and ministers to income tax on voluntary contributions.

Held Liable Herbert *v.* McQuade, (1902) 2 K.B. 649, Poynting *v.* Faulkner, (1905) 93 L.T. 369, Blakiston *v.* Cooper, (1909) A.C. 104.

Held not Liable—Turner *v.* Cuxson, (1888) 22 Q.B.D. 150, Turton *v.* Cooper, (1905) 92 L.T. 863.

The distinction is a fine one, for these are hard cases. The fact that the contributions are voluntary does not prevent the tax attaching; the terms "salaries, fees, wages, perquisites, or profits" cannot be restricted to enforceable payments, but the condition of the tax attaching is that the benefit is obtained, not on grounds of purely personal desert or distress, but in virtue of the office held and this is generally apparent by a similar benefit accruing under like conditions to several similarly circumstanced ministers. In Blakiston *v.* Cooper (Easter Offerings made in response to an appeal from the Bishop of the diocese that the incumbents of poor benefices throughout the diocese might in that way obtain more adequate remuneration), Poynting *v.* Faulkner (grant from stipend augmentation fund), Herbert *v.* McQuade

(grant from Queen Victoria Clergy Sustentation Fund in augmentation of the value of his benefice, as part of a scheme for raising the value of every benefice to £200 a year); the important points are generality of application of the benefit and continuity, apart from any special occasion or purpose. "Gifts of an exceptional kind such as a testimonial or contribution for a specific purpose as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman," Blakiston *v.* Cooper (*ubi sup.*), is a statement indicating benefits which are neither profits nor perquisites, they do not accrue "by reason of his office." By Rule 8 all official deductions and payments made on receipt of the pay or emoluments are to be deducted. By Rule 9 travelling expenses, keeping and maintenance, etc., of a horse and other expenditure, "wholly, exclusively and necessarily" incurred in performing the duties of the office may be deducted. The cases, Lothian *v.* Macrae, (1884) 22 S.L.R. 219, Charlton *v.* Commissioners of Inland Revenue, (1890) 27 S.L.R. 647, Bowers *v.* Harding, (1891) 1 Q.B. 560, Jardine *v.* Gillespie (1907) S.C. 77, decided on the former provisions (reproduced in effect by Rule 9) show the nature of the deductions permitted and not permitted thereby. In Lothian *v.* Macrae, (1884) 22 S.L.R. 219, a minister by reason of age had an assistant appointed by the congregation to help him in performing his duties as minister. The assistant's salary was in part contributed by the minister, and in respect of this contribution the minister claimed a right to deduct the amount. The Court rejected the claim; they looked at the duties of the office and considered only what expenditure the nature of those duties rendered it needful to incur: such expenditure was allowable but expenditure incurred not in doing the duties but in getting them done for him, a

payment to another person for performing his duty, was not within the then provision (S. 52 of I.T.A. 1853). In Charlton *v.* Commissioners of Inland Revenue, (1894) 27 S.L.R. 647, the case was very unsatisfactorily stated. Expenses of travelling to visit members of congregation outside the parish were allowed by the Court; the Commissioners had allowed stationery, attending General Assembly, attending presbytery and Synods, and Communion expenses, the Court disallowed a claim in respect of rent of his "study" and for books. If the duty was one which the minister might be fairly expected to do or might be enjoined to do by his ecclesiastical superiors the incidental expense was one which might fairly be deducted from his income before the balance was charged with income tax.

In Jardine *v.* Gillespie, (1907) S. C. 77, expenses incurred in obtaining augmentation of his stipend, and sums paid by him to others to occupy his pulpit during his holidays, were disallowed by the Court. The other points were quantum of allowance for keep of horse and carriage in a large parish and for Communion expenses. The Court doubted whether if the facts had been properly put before them any part of the fund received by the minister for Communion expenses would have been taxable in his hands the allowance had, it was asserted, been granted to him under decree of locality of teinds, and had been so paid under deduction of tax, but the case stated did not admit of any decision on more than the quantum.

By Rule 10 where the Treasury are satisfied as to any "class of persons," in receipt of any salary, fees or emoluments payable out of the public revenue, that such persons are obliged to expend money "wholly, exclusively and necessarily" in performing the salaried duties the Treasury may fix as an allowable deduction the sum

which represents such expenditure: if a particular individual can show that (*e.g.*, under Rule 9) he would be entitled to a larger deduction, his right to such larger deduction is preserved. By the General Rules for all Schedules, Rule 2, a clergyman or minister of any religious denomination may deduct (*a*) any money paid or expenses incurred by him "wholly, exclusively and necessarily" in the performance of his duty as a clergyman or minister (*b*) such part as the Commissioners allow (not exceeding one-eighth) of the rent paid by him for a dwelling house, any part of which is used mainly or substantially for his duty as minister. And if he occupies a dwelling house but pays no rent the deduction is to be one-eighth of Schedule A. annual value (Rule 2 (1)). If no such deduction has been made in the assessment the tax represented by the deductible amount is on proof of payment to be repaid to him (Rule 2 (2)).

Every assessment is to be made for one year (Rule 2) and in case of change in the holder of the office or employment no new assessment is required (*id.*) but the holder of the office or employment, quitting it, or dying during the year of assessment, pays only on the proportion for the period he held office and his successor for the period he holds (no doubt if the successor's salary is less this also is adjusted but the rule is silent on the point (*id.*)). If an annuity, pension or stipend ceases within the year of assessment the assessment thereon is to be discharged from date of cessation (Rule 3) and any increase (either during the year of assessment or in respect of that year) in salary or emoluments admits of additional assessment (*toties quoties*). The basis is the amount actually received in the year of assessment, less deductions allowed (Rule 5). This is subject to Rule 4 which provides that perquisites (defined in Rule 4 (3) *supra*) may be estimated on the profits of the preceding year or on the average

for one year of the profits thereof in the three preceding years (Rule 4 (1)), ending either 5th April, or the day on which accounts thereof have usually been made up (Rule 4 (2)).

As to the mode of assessment :—

Offices and employments of profit under a Railway Company :—

The Special Commissioners are to assess the Company and notify its officer (Rule 7), the Company is to collect and deduct from the holder of the office (*id.*).

Official pay (defined Rule 11 (3)) :—The tax is to be deducted and paid to Commissioners of Inland Revenue. The office may be one in which *ex officio* Commissioners exist for assessment, in which case they assess (Rule 18 (1) and see Rule 18 (4) and (5)). In other cases the General Commissioners assess in their respective divisions and transmit an account to the office where the official pay is payable (Rule 11 (2)). Annuities and pensions payable out of any particular branch of the public revenue, at the office of that branch, may be assessed by the commissioners acting for that Department (Rule 11 (4)).

Other emoluments arising outside Rule 11 :—The officer, receiver, or agent charged with payment is to deduct and account (Rule 12), and where tax cannot be so deducted or the emoluments have been paid over without deduction, and the person charged neglects to pay, the Commissioners for the office certify to the General Commissioners the neglect and sum payable and the Commissioners issue their warrant to the collector of the parish where the person chargeable resides to levy the tax and pay it over (Rule 13). Where an office is executed by deputy, in receipt of the profits, he is to pay and deduct (Rule 14 (1)). Where emoluments or pension charged under the Schedule are charged with a sum payable to another person a proportionate part of

the tax in respect of that sum may be deducted; and the same applies where a deputy is paid out of the emoluments of the office (Rules 16 and 17).

GENERAL RULES APPLICABLE TO ALL SCHEDULES.

1. Every body of persons shall be chargeable to tax as any person is chargeable under the Act; and by Rule 20 the body of persons is to be assessed on the full amount of the profits or gains, before any dividend is made thereof in respect of any share, and in paying dividend is to deduct tax.

2. Applicable only to Schedule D. and Schedule E, and given under those Schedules.

3. Every British subject whose ordinary residence has been in the United Kingdom shall be assessed notwithstanding absence from United Kingdom if such absence is only for purpose of occasional residence abroad, and shall be charged as a person residing in the United Kingdom on the whole amount of his profits or gains arising from property, allowance, annuity, stipend, trade or vocation in United Kingdom or elsewhere (see p. 91).

4 to 6. Provisions for charging persons (resident in United Kingdom or not) in name of agent here.

7. to 12. These appear to be applicable only to assessments made under Schedule D. and are referred to under that Schedule.

13. Person chargeable in respect of an incapacitated person (S. 237), or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done for purpose of assessment and payment.

14. Right of recoupment and indemnity for such person.

15. Receiver appointed by any Court in United Kingdom which has direction and control of any property in respect of which tax is chargeable shall be assessed to tax notwithstanding such direction and control and be answerable for doing all matters required for purpose of assessment and payment of tax.

16. A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable as if she were sole and unmarried : but (1) profits of married woman living with her husband shall be deemed his profits and charged in his name and not in name of her or her trustee (see Purdie *v.* Rex. (1914) 3 K.B. 112 and Brooke *v.* C.I.R. (1918) 1 K.B. 257) and (2) married woman living in United Kingdom separate from her husband (whether he is temporarily absent from United Kingdom or otherwise) who receives any allowance or remittance from property out of United Kingdom shall be assessed and charged as a feme sole if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him or from his property or on his credit.

17. (1) On application made by either husband or wife within six months before 6th May in any year of assessment, income tax for that year shall be assessed on income of husband or wife as if not married and all provisions of Act shall (save as otherwise provided by the Act (see *e.g.*, S. 31)) apply as if they were not married. (2) Commissioners of Inland Revenue may require returns for the purposes of this Rule to be made at any time and penalties to apply to neglect, refusal, or delay.

18. Where any person dies without having delivered a statement assessment in respect of profits or gains which accrued to him before his death may be made, at any time within three years after expiry of year

of assessment, on his executors or administrators, the tax to be a debt due from his estate.

22. Enables General Commissioners to settle disputes between tenant and landlord, present and former occupier, as to deduction on account of tax to be made from rent, annual sum, etc., the decision to be final.

19, 21 and 23 are as follows :—

19. (1) Where any yearly interest of money, annuity, or any other annual payment (whether payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract or whether payable half-yearly or at any shorter or more distant periods), is payable wholly out of profits or gains brought into charge to tax, no assessment shall be made upon the person entitled to such interest, annuity, or annual payment, but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest, annuity, or annual payment, without distinguishing the same, and the person liable to make such payment, whether out of the profits or gains charged with tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled, on making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due.

The person to whom such payment is made shall allow such deduction upon the receipt of the residue of the same, and the person making such deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid.

(2) Where any royalty, or other sum, is paid in respect of the user of a patent, wholly out of profits or gains brought into charge to tax, the person paying the royalty or sum shall be entitled, on making the payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the royalty or sum was accruing due.

21. (1) Upon payment of any interest of money, annuity, or other annual payment charged with tax under Schedule D., or of any royalty or other sum paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of the payment.

(2) Any such person shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest, annuity, annual payment, royalty, or other sum respectively, as is not paid out of profits or gains brought into charge, as the case may be, and every such amount shall be a debt from him to the Crown and shall be recoverable as such; and the provisions contained in section 2 of the Stamp Duties Management Act, 1891, in relation to money in the hands of any person for stamp duty, shall apply to money deducted by any such person in respect of tax.

(3) The amount of annuities which an assurance company carrying on the business of granting annuities is entitled, for the purposes of this rule, to treat as having been paid out of profits or gains brought into charge to tax, shall not exceed the amount of the taxed income of its annuity fund.

23 (1) A person who refuses to allow a deduction of tax authorised by this Act to be made out of any payment, shall forfeit the sum of fifty pounds.

(2) Every agreement for payment of interest, rent, or other annual payment in full without allowing any such deduction shall be void.

These rules furnish instances of :—

COLLECTION AT THE SOURCE.

This term is used to denote cases in which, for the State's convenience, the Act renders the tax recoverable from the person or body having control over the property or source whence taxable income arises or from the person who is under a duty or obligation to pay such taxable income. In many cases, notably in the case of income from public revenues charged under Schedule C., the various persons or bodies on whom the duty of deducting and accounting for the tax to the Crown falls are, in this respect, agents for collection, what they have to deduct they must pay over and what they are liable to pay over they are entitled to deduct, and the sums they pay over to the Crown are (Ashton Gas Co. *v.* A.G., (1906) A.C. 10) part of the dividends, a part intercepted by the Crown. Under Schedule E. (public employments) the position is mainly but not in all cases similar to that under Schedule C. Under Schedule D. where taxable profits are earned by a body of persons, a term defined in S. 237, the body (Rules 1 and 20 of General Rules applicable to all Schedules) is taxed, pays the tax and deducts from the shares of the members of the body their respective proportions, and is discharged thereby as against such members as if the payment had been made without deduction. A company's dividend is the commonest example. (The

declaration of a dividend as "tax free" or subject to tax at a certain rate, merely denotes that in the former case the net amount, the sums received, represent a certain percentage on the investment, in the latter case the gross amount (*i.e.*, the tax to be deducted and the sum to be received together) represents the stated percentage on the investment.) The advantage to the State of taxation at the source is obvious, convenience of collection; but since the retention of the whole or part of the tax by the State depends ultimately on liability of the individual holder, repayment is claimable by him in such a case under "exemption abatement or relief." Under Schedule A. rent is not taxed, *eo nomine*, the tax is on the annual value of the land, that annual value is approximately the rent actually obtained, or hypothetically obtainable (usually the former), subject to certain deductions, the occupier not the land owner has to pay the tax and after payment thereof, he can deduct the rate of tax out of every pound of rent, to the extent of the assessment under Schedule A.: the person rendered liable to the Crown recoups himself for a payment for which he is liable to the Crown but which in truth is not his tax and his right of recoupment is inalienable; this matter is dealt with under Schedule A.

Cases of greater difficulty arise in respect of "annuities yearly interest and other annual payments." There is a broad distinction between two classes of cases, in both of them the creditor's right (annuity, yearly interest, interest (not annual but) taxed under Schedule D., or other annual payments) is subject to payment of tax. In one class of cases (payment out of profits or gains) the tax is payable by the debtor on profits or gains brought into charge and the creditor's right is treated in effect as a slice of those profits or gains; the debtor pays tax on his profits or gains and

then *pro tanto* passes on the burden. (A.'s profits or gains are £1,000, A. is taxed thereon ; B. has an annuity payable thereout of £200. The income tax is 5s. in the pound. A. has paid £250 tax, B., who had an annuity representing one-fifth of £1,000 before taxation, receives one-fifth of the £750 which remains after taxation, and A.'s payment of tax frees from tax both A.'s profits and B.'s annuity out of them). In the other class of cases (payment not made out of profits or gains) A., who pays the interest etc. taxable, is a mere collecting agent of the Crown ; B. who receives it, is liable to the tax ; the duty is B.'s duty not A.'s This broad distinction corresponds with Rules 19 (Rules applicable to all Schedules) (payable out of profits or gains) and Rule 21 of same Rules (not payable or not wholly payable out of profits or gains). Under Rule 19 the person taxed in the first instance retains the tax which he deducts in recoupment of his payment to the Crown ; under Rule 21 (at least in so far as the payment of the interest, annuity, etc., is *not* out of profits or gains) the person who collects the tax must account for it to the Crown, there is no question of recouping himself. Rule 19 extends only to " yearly interest of money, annuity, or any other annual payment payable *wholly* out of profits or gains." No assessment to income tax is to be made on the person entitled to such interest, annuity, etc. ; the assessment is to be on the profits or gains out of which the payment of the annuity, etc., is made and this Rule applies also to a royalty, or other sum in respect of the user of a patent, paid wholly out of profits or gains brought into charge to tax (and see S. 209 (1) (*b*)). Rule 21 extends to " interest of money, annuity, or other annual payment *charged with tax under Schedule D.*" (the word yearly is not in this Rule applied to interest, assessability under Schedule D. is

substituted) "or any royalty or other sum paid in respect of the user of a patent," not payable, or *not wholly* payable, out of profits or gains brought into charge. Here, so far as the payment is made out of profits or gains already taxed, the tax is retained in recoupment; so far as it is not made out of profits or gains already taxed the person deducting must forthwith render an account of the amount deducted and is liable therefor as for a debt to the Crown. Under Rule 19 the tax to be deducted and retained is the tax thereon at the rate in force during the period through which the tax was accruing due. Under Rule 21 the tax to be deducted and accounted for is the tax on the payment made at the rate in force at the time of payment. S. 211 (2) allows deduction of tax in respect of past payments to be carried forward to future payments, in certain circumstances, and, if there is no future payment, direct recovery as a debt. But the terms used in these Rules have been the subject of decisions which must be referred to. "Payable out of profits or gains":—The decisions show that the test is whether the payer was "enabled to pay it by reason of his receiving an income from a taxable source," Phillimore J. in Delage *v.* Nugget Polish Co., (1905) 92 L.T. 682. There must be something to establish connection between the fund which has been taxed in the payer's hands and the annuity, etc., to earmark the former as the source of the latter, but clearly no "charge" is required, it is sufficient if as a matter of proof it is shown the annuity must have come, or did come, out of the taxed fund and might lawfully be paid thereout (Edinburgh Life Assurance Co. *v.* Lord Advocate, (1910) A.C. 143 (as to Life Assurance Companies now, see Rule 21 (3) referred to p. 111), L.C.C. *v.* Attorney General, (1901) A.C. 26; Attorney General *v.* L.C.C., (1907) A.C. 131;

Sugden *v.* Leeds Corporation, (1914) A.C. 483). And "profits or gains" do not mean only such profits as are assessable under Schedule D. but any profits or gains taxable under the Act under any Schedule (see L.C.C. *v.* Attorney General (*ubi supra*) and Edinburgh Life Assurance Co. *v.* Lord Advocate (*ubi supra*)). And it is useless setting up a claim to retain tax and at the same time contending for an assessment on a footing which shows the tax is not retainable, as in Hancock *v.* General Reversionary and Investment Co. Ltd., (1919) 1 K.B. 25.

Difficulty, however, has arisen over the words "annuities, yearly interest and other annual payments," because those words taken with the immediate context (see Rule 19, line 2) go very far. In Foley *v.* Fletcher, (1858) 3 H. and N. 769 the judgment of Bramwell B. expounds very clearly the difficulty as to annuities and annual payments. There A. sold a share of mines to B. for £45,000, this sum was to be as to part paid down, as to the rest paid by instalments extending over 30 years. B. claimed under S. 40 of Income Tax Act, 1853 (16 and 17 Vict. c. 34), to deduct income tax from these instalments. It was held the instalments were payment of a debt and therefore not "profits or gains" within the Act. Bramwell B. (at p. 783) said "one would think, on reading the language of S. 40 (of 16 and 17 Vict. c. 34) alone, nothing could be plainer. This is an annual payment, how then does it not apply?" And he laid down that the intention of the Act was to charge only annual payments *ejusdem generis* with interest, *i.e.* those that constituted "profits." It followed that B. had no right of deduction for these instalments were capital and not profits or income. Probably in that case each instalment was partly principal and partly interest and in respect of the interest deduction might according to the later cases

have been made, but the Court noted there was nothing before them on that point. In Taylor *v.* Evans, (1856) (1 H. and N. 101) the instalments were assumed to be "annual payments," the refusal of the right to deduct went on another ground. So far as that case is an authority as to the instalments being annual payments it rests on the same principle as the much later case of Chadwick *v.* Pearl Life Assurance Co., (1905) 2 K.B. 507: in that case a lessee A. had sublet to B., then he, A., assigned his lease to B. and B. was to pay to A. each year during the residue of the term assigned, exactly the same sum that he, when sub-lessee, had paid as rent and a further lump sum. Walton J. held the sums payable each year during the term were "annual payments," they represented in effect taxable "profits or gains" –in both cases the payments were substantially the equivalent of rent. Cases in which annuities were held not so to be taxable, on the same principle as in Foley *v.* Fletcher (*ubi supra*), are given under Schedule C. (Secretary of State in Council of India *v.* Scoble, (1903) A.C. 299 and E.I. Railway *v.* Secretary of State in Council of India, (1905) 2 K.B. 413). And a fixed weekly payment made payable on a fixed day every week for a period contemplated as likely to last for years (under a separation deed) was held to be an "annual payment" (in *re* Janes' settlement, (1918) 2 Ch. 54). With reference to "yearly interest" the difficulty is that those words on a wide construction would extend to almost all interest, on a narrow construction to hardly any. The latter difficulty was dealt with in Bebb *v.* Bunney (see below) the former in Goslings and Sharpe *v.* Blake (see below). It has been "settled for very many years there is some limit to the words yearly interest," "interest payable in dealings between merchants such as in discounting of bills and the

like and on loans made for short periods is not annual interest " per Cozens-Hardy (in *re* Cooper, (1911) 2 K.B. 550). In that case interest on a final judgment obtained with the object of serving a bankruptcy notice and so obtaining payment directly or indirectly through adjudication of bankruptcy, which interest had only run for seven days, was held not subject to deduction, since it arose out of a transaction contemplated as transient and not lasting for a year. There is no ground for saying that interest on a judgment entered up as a security and intended to continue, and continuing, more than a year would not be " annual interest."

This case approves Mosse *v.* Salt, (1863) 32 Beav. 269, in which deduction was allowed from payments to bankers in respect of mortgage interest, the mortgages being made to them for fixed and definite sums, and refused in respect of interest on the fluctuating overdrafts on current account. In Bebb *v.* Bunney, (1854) 1 K. and J. 216, it was held that a purchaser liable to pay interest on his purchase money might deduct income tax on paying such interest. The Court could not distinguish this case from that of a mortgage seeing that mortgage interest was rarely " yearly " interest in any sense which would admit of distinguishing between it and interest on purchase money : yearly interest was " any interest at a yearly rate and which may have to be paid *de anno in annum* " (the point that in a contract of purchase interest for delay in completion is always contemplated, if at all, only for a period which falls short of a year and that this case should be treated like other short interest does not appear in the judgment). In Davis *v.* Craven, (1907) 2 Ch. 448, a mortgagor covenanted on his or his son's death whichever first happened for payment of a principal sum with simple interest thereon at the rate of 5 per cent.

per annum, reckoned from August 10th, 1887, up to the time of such death. The mortgagor predeceased his son and died 1906. When the executor came to pay this simple interest, for nearly twenty years, amounting to nearly as much as the principal sum, he claimed to deduct interest and the claim was allowed. Cases in which the interest was held not to be "annual" and deduction was disallowed are Goslings and Sharp *v.* Blake, (1889) 23 Q.B.D. 324; Mayor of Gateshead *v.* Lumsden, (1914) 2 K.B. 883; and Garston Overseers *v.* Carlisle, (1915) 3 K.B. 381. Goslings *v.* Blake (*ubi supra*) was a case of a short loan by a banker to a customer which was of a class (Bowen, L. J.) made for a period short of one year, not intended to be, and not in fact, continued for a period of a year; the rate of interest was expressed in a notation borrowed from the language of cases where there are yearly loans; it was convenient so to express it but it was not calculated on a year nor on the supposition that the loans would last for a year and therefore was not yearly interest: when it ran over the year the case might be different. Lindley L. J., described these as cases where "in point of business" the interest was not "yearly." In Mayor of Gateshead *v.* Lumsden (*ubi supra*) a frontager's liability raised the question; the frontager owed a debt, the Corporation forbore to sue him, the defendant (the frontager) paid varying sums at irregular intervals in part payment which the Corporation credited in the first place to payment of interest and then to payment of principal; the debt might have been enforced at any moment, the debtor might have paid it at any moment, in "point of business" it was clearly not "annual interest."

In *re* National Bank of Wales, (1899) 2 Ch. 629, a company director was ordered to pay, in a winding up,

a sum of money representing a loss sustained by the company by his misfeasance, the order was for payment of £37,000 and 5 per cent. interest from the date at which the company had sustained the loss to date of payment and deduction of income tax was refused by Wright, J. (judgment not appealed against on this point) on the ground that the £37,000 with 5 per cent. interest for the intervening years between the loss to the company and the recoupment was merely a mode of ascertaining the principal sum the company were to receive, *i.e.*, not, in substance, interest at all. In Middlesborough, etc., Benefit Building Society *ex parte* Wythes, (1885) 53 L.T. 492, executors were held entitled to deduct, in paying instalments on a building society mortgage, income tax in respect of that part of the instalments that represented interest.

Under Rule 21 the interest of money, annuity or other annual payment must be charged with tax under Schedule D. (this condition does not apply to royalties not payable out of profits or gains brought into charge).

It will be noted that the passing of the Customs and Inland Revenue Act, 1888, S. 24 (3) which rendered persons liable to pay over to the Crown income tax deducted in cases where it was not in recoupment of income tax paid on profits or gains has got rid of the difficulty felt previously (see in Foley *v.* Fletcher (*ubi supra*)), the possibility of double tax being borne by the same payment; once in suffering deduction (kept by the person deducting) and once by direct assessment on the person entitled to the payment. Reference should also be made to pp. 44–54 dealing with similar questions under Schedule A.

PART II.

Super-Tax.

This tax, charged by S. 4, applies only to the income of any individual (companies and bodies of persons are not subject to it). At present it is charged, in addition to the income tax, on the income of any individual whose total income from all sources exceeds £2,500, but only on the excess of that amount of income over a lower figure, at present £2,000. And there is no distinction for this purpose between earned and unearned income. The duty is called "an additional duty of income tax"; the rate is to be that prescribed by Parliament year by year. Notwithstanding the description "additional duty of income tax" there are manifest differences between income and super-tax, Cozens Hardy, M. R., in Brooks *v.* Inland Revenue Commissioners, (1914) 1 K.B. at p. 584, pointed out some differences :—not taxed at source, depends on total income exceeding (*then*) £5,000 a year, not calculated like Schedule D. on an average of three years, payable on a figure arrived at by the year previous to the payment, assessed by the Special Commissioners who are not the Commissioners who usually assess income tax (that case on appeal to House of Lords is referred to below). The tax for the particular year of assessment (which is the income tax year, 6th April of one year to 5th April of the next year) is based on the income from all sources for the previous year. That income from all sources is to be estimated in the same manner as income from all sources is estimated for purposes of exemption or abatement (Part III.) under the Act, subject however to certain provisions hereinafter mentioned (S. 5 (1)). That is to say super-

tax for 1918-19 depends in the main on income tax basis for the year 1917-18 and that *may* throw you back, see, *e.g.*, Gaunt *v.* Commissioners of Inland Revenue (referred to below), three years before that. The super-tax is not on the income you have in the year of assessment but on the income you are presumed to have had the year before. By S. 5 (2) it is provided that where an assessment to income tax has become final and conclusive for the purposes of income tax in any year it shall also be final and conclusive for the purposes of super-tax for the following year and no allowance or adjustment of liability on the ground of diminution of income or loss is to be taken into account unless that allowance or adjustment has been previously made in respect of income tax on an application under the special provisions of the Act relating thereto. This sub-section alters the law as it stood prior to Finance Act, 1915, S. 18: for the previous law see Commissioners of Inland Revenue *v.* Brooks, (1915) A.C. 478 and Hill *v.* Commissioners of Inland Revenue, (1912) S.C. 1,246.

In estimating the income of the previous year for the purpose of super-tax:—(1) from annual value of land (estimated otherwise than in relation to profits) assessed to income tax, deduct any sum by which the assessment is reduced for the purpose of collection and any sum on which income tax has been repaid under the Act in respect of the cost of maintenance, repairs, insurance and management (*i.e.*, the deductions mentioned in Rules 7 and 8 of Schedule A. No. V.) this is in addition to any other deduction (S. 5 (3) (*a*)). (2) in case of an individual in the service of the Crown abroad deduct such sum as the Treasury may allow for expenses which are in their opinion necessarily incidental to the discharge of the functions of his office and for which an

allowance has not already been made (S. 5 (3) (*b*)). (3) Any income chargeable with income tax by way of deduction is to be deemed income of the year in which it is receivable. Deductions allowable for annual sums paid out of the property or profits of the individual are to be allowed as deductions in respect of the year in which the sums deductible were payable (S. 5 (3) (*c*)). The clause adds " notwithstanding the income or annual sums, as the case may be, accrued in whole or in part before that year." The words are difficult to construe ; if, as apparently is the case, they mean that in estimating for super-tax the income of the previous year any income which was in that year payable to the person to be taxed is to be counted in (though not in fact received) and any annual sums payable out by the person to be taxed in that year (though not in fact paid then) if allowable as deductions, are to be deducted from that year, the purpose is obvious ; accidental or intentional postponement in such matters is not to be allowed to affect the claim of the Crown to super-tax which would follow strict performance in point of time of obligations ; on the other hand having regard to S. 5 (2) which makes assessment to income tax final and conclusive, acceptance without analysis of the assessment to income tax may involve a conflict between a basis (income tax) depending in part on actual date of receipt or payment out and the provision or basis (of super-tax) depending on date for receipt or for payment out. It does not follow the results under S. 5 (2) would be those obtained by following 5 (3) (*c*) independently. Further, the first provision refers to sums payable to the person assessed to super-tax which have come to him diminished by taxation at source. Now taxation at source is inapplicable to super-tax and these sums must be included without deduction of

income tax, *e.g.*, of dividends the gross amount and not the net after deduction of income tax (see Samuel *v.* Inland Revenue Commissioners, (1918) 2 K.B. 553) must be included. For super-tax purposes a man's income includes that portion which has been intercepted by the Crown as income-tax—it is a tax on a tax. So also the 4 per cent. compounded War Stock must be included at a gross amount arrived at by adding income tax at last year's rate to last year's dividends. Compare the principle in Ashton Gas Co. *v.* A.G., (1906) A.C. 10. *Per contra* in super-tax fee farm rents, tithe, land tax, rates, mortgage interest, annuities, patent royalties and other deductions not allowable for income tax purposes, are claimable: for these represent income of the payee, not of the payer, and any tax leviable on the payer in respect of them he deducts and retains when making payment but for super-tax purposes the whole amount comes off the super-taxable income. A very important question on this subject was raised in Earl Howe *v.* Commissioners of Inland Revenue, (1918) 2 K.B. 584. A. mortgaged to B. certain life policies, the mortgage extending also to A.'s life estate in certain lands, he covenanted to pay interest on the mortgage money and the annual premiums on the life policies and A. claimed that the amount of these premiums was an annual payment "reserved or charged on the income, etc.," and that he was entitled to deduct it in computing his income for super-tax. Sankey, J., so held in deference to an Irish case but expressed his concurrence in the dissent of Palles C.B. from that decision. An appeal from this decision is pending. Where the person liable to super-tax derives part of his income from profits as partner in a trading concern the method of calculation is to average the profits of the firm for the three years preceding *the year before* the year of assessment to super-tax, then take the share of the particular partner

for the year preceding the year of assessment to super-tax in the profits so averaged. See Gaunt *v.* Inland Revenue Commissioners, (1913) 3 K.B. 895, and Bartlett *v.* Inland Revenue Commissioners, (1914) 3 K.B. 686. Now under S. 5 (2) a shorter route would usually be taken—the firm's income for income tax purposes for the year preceding that of assessment to super-tax, and the share of the partner therein for that year.

In case of death of an individual liable to super-tax during any year of charge part only of that super-tax shall be paid—" proportionate to the part of the year which has elapsed before his death " (S. 6).

Super-tax is to be assessed and charged by the Special Commissioners (S. 7); every person chargeable with super-tax must give notice of his chargeability to the Special Commissioners before 30th September in the year for which the super-tax is chargeable (S. 7 (3)).

If required by notice served (as prescribed by regulations under the Section) by the Special Commissioners to make a return of his total income from all sources any person, whether he is chargeable or not with super-tax, must make such return in the form and within the time required by the notice. So also must any person who is chargeable with or liable to be assessed to *income* tax as representing an incapacitated (infant, married woman, lunatic, idiot or insane person, S. 237) non-resident or deceased person of the total income from all sources of the person he represents (whether that person is liable to super-tax or not) (S. 7 (2)). A continuing penalty of £50 per day safeguards this duty (S. 7 (4)). If any person fails to make a return under this Section or if the Special Commissioners are not satisfied with any return made under this Section they may make an assessment of super-tax according to the best of their judgment (S. 7 (5)).

The provisions of the Act relating to persons who are to be chargeable with income tax, to income tax assessments, to appeals against them, to collection and recovery of income tax and to cases to be stated for the opinion of the High Court, are, so far as they are applicable, to apply to the charge assessment, collection, and recovery of super-tax. The Special Commissioners for the purpose of assessment are to have any powers of a surveyor and any person nominated by the Commissioners of Inland Revenue may represent the Crown on any appeal before the Special Commissioners with the same powers as a Surveyor has at, and upon, the determination of any appeal relating to income tax (S. 7 (6)).

The Special Commissioners may amend any assessment made by them under this Section or make any assessment or an additional assessment at any time within the year of assessment or within 2 years after the expiration thereof (S. 7 (7)). And the Commissioners of Inland Revenue are empowered to make regulations for the purpose of carrying this Section into effect (S. 7 (8)). In the recent case of Brooke *v.* Inland Revenue Commissioners, (1918) 1 K.B. 257, the liability of a non-resident to super-tax was raised and the Court held liability existed in respect of the income in the United Kingdom, such income being above the amount which attracted super-tax. Scrutton, L. J., after referring to the general territorial limit of liability to income tax (that either the property from which the taxable income is derived must be situated in the United Kingdom, or the person whose income is to be taxed must be resident there) said, for what reason should Parliament impose the super-tax on one-half only of the income tax assessments and not on the other : why impose super-tax on a person resident in United Kingdom and omit it when the source of taxable income is in United Kingdom? Warrington, L. J.—Is her non-

residence here to excuse her from super-tax in respect of the same income as that which attracts income tax? Swinfen Eady L. J. dealt in detail with every point in the argument, and not merely with the broad issue. Further, the Court held it immaterial that income tax had been deducted at the source.

If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue either by a husband or wife within six months before 6th May in any year of assessment, the total incomes of both are to be treated as if those incomes were one to determine liability to tax and quantum of tax, and the amount payable is then to be divided between husband and wife in proportion to their respective incomes and so that the total amount payable is not less by reason of such division between them : when these separate amounts are ascertained in this way super-tax on each (in respect of the proportions so ascertained) is to be assessed, charged, and recovered as if husband and wife were not married and all the provisions of the Act with respect to the assessment charge and recovery of super-tax and the penalties for failure to make a return shall apply as if they were not married. (S. 8 (1) (*a*) and (*b*)). For the purpose of this S. 8 the Commissioners of Inland Revenue may require returns to be made at any time and the income tax penalties for neglect, delay, or refusal in relation to delivery of statements of profits or gains with the necessary modifications are to apply to these returns for Super-tax (S. 8 (2)). Special provisions to be noted in relation to super-tax are :—S. 24 (Restriction of tax where margin of income above limit is small), S. 46 (Securities may be issued free of super-tax), S. 48 (2) (how interest on securities, issued free of income tax but subject to super-tax, is to be computed for super-tax purposes), S. 50 (provision for postponement

of payment of super-tax in certain cases), Ss. 51 and 52 (relief from super-tax to persons serving in the War) and S. 210.

PART III.

Exemption, Abatement and Relief.

S. 9. For this purpose the total income from all sources for the year of assessment (S. 237) must be estimated according to the Act and proved as required by the Act.

S. 10. Then, if not exceeding £130—exemption.

S. 11. If exceeding £130 but not exceeding £400—no tax on £120 (abatement); if exceeding £400 but not exceeding £600—no tax on £100 (abatement); if exceeding £600 but not exceeding £700—no tax on £70 (abatement). These provisions do not apply to unincorporated or corporate bodies. S. 9 gives relief only to an "individual" who claims and proves, etc. This supersedes the questions raised in Mylam *v.* Market Harborough Advertiser Co., (1905) 1 K.B. 708, and Curtis *v.* Old Monkland Conservative Association, (1906) A.C. 86.

S. 12. Relief in respect of children. Income exceeding £130 and not exceeding £800, relief from tax on £25 is given for every child living and under 16 years of age at commencement of "year of assessment" (child includes stepchild but not illegitimate children unless the "parents" (an illegitimate child is *filius nullius*, but parentage by reputation no doubt is meant) have married each other subsequently).

The relief given in respect of children is extended to cases where someone else's child, under 16 at commencement of year of assessment, is in the custody of, and maintained by, the claimant for relief, and any other

person who could claim relief in respect of such child has relinquished his claim.

If the income exceeds £800 and does not exceed £1,000, similar relief can be claimed, if three or more children satisfy the conditions for relief, for each of these children above the number of two.

S. 13. Relief in respect of wife, and certain relatives, etc. Income exceeding £130 but not exceeding £800, claimant has a wife living with him for year of assessment, relief is given from tax on £25 ; or (if claimant is a widower) a female relative of his or of his deceased wife, residing with him for such year to take care of any child, similar relief is given ; and if a person being a relative of him or his wife (incapacitated by old age or infirmity from maintaining himself, and without more income than £25 a year) is maintained for year of assessment at his expense, similar relief is given for each person, *i.e.*, relief from tax on £25 for each. ("Child" in this Section has the extended meaning given by S. 12 and "relative" includes any person of whom the individual in question had custody and maintenance up to age of 16, *i.e.*, not a relative at all.)

S. 14. Relief in respect of earned income. Income not exceeding £2,500 and any part "earned income" ; the earned income rate is to apply to the earned income and in addition the unearned income rate to the unearned income. This relief is in addition to any other exemption, abatement, or relief. But where abatement is claimed for income not exceeding £700 (S. 11) or relief for premiums for life assurance or deferred annuities (S. 32) or for children and dependents as above (Ss. 12 and 13), relief under this Section is only to be given in respect of such earned income (if any) as remains after deducting the income already freed from tax by exemption, abatement, or relief ; and where relief is given

under this Section and exemption, abatement, or relief is afterwards allowed by way of repayment the total amount of relief under this Section and by way of exemption, abatement, or relief, as aforesaid, is not to exceed the amount obtainable if the whole relief had been claimed simultaneously.

Earned Income is defined as follows :—

Sub-section (3). For the purposes of this section the expression " earned income " means—

(*a*) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay, or not ; and

(*b*) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual ; and

(*c*) any income which is charged under Schedule B. or Schedule D., or the rules applicable to Schedule D., and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession, or vocation, either as an individual, or, in the case of a partnership, as a partner personally acting therein.

If a business is carried on by trustees of a Will, income received therefrom by the beneficiaries is not earned income, Inland Revenue *v.* Shiel's Trustees, (1914) 52 S.L.R. 103. So when A. was in a lunatic asylum and his business was carried on by his *Curator bonis* for him, the profits of this business were held not to be earned income of A. on

the ground that to constitute earned income, as defined, it must be the result of the personal exertions of the man whose income it is. The Statute excludes the argument that what is done by the agent is done by the principal. See M'Dougall *v.* Inland Revenue, (1918) 56 S.L.R. 90.

Convert a business carried on by partners into a Company managed by those partners as directors and the business profits become unearned income, they are dividends on shares. The tax on earned income is graduated usually according to the total income of the individual from all sources, earned and unearned. There is no longer the limited time (up to 30th September in year of assessment) for claiming the earned rate: the general limitation on repayment is three years after the end of the year of assessment (S. 41); see also S. 27 (1) and S. 25 (when the 3 years runs from a different date).

(4). In cases where the profits of a wife are deemed to be the profits of the husband any reference in this Section to the individual includes either the husband or the wife.

S. 15. Relief in respect of unearned income. Income not exceeding £2,000; the claimant is entitled to repayment of so much of the tax paid as will reduce the tax on his unearned income to the amount which would have been paid if the tax were charged on that income at the reduced rate for unearned incomes in the year of assessment. Relief given under this Section is to be in addition to any exemption, abatement, or other relief under the Act, except that where any such abatement, exemption, or relief is to be determined by reference to the amount of the tax on any sum the amount of the tax shall be calculated at the reduced rate. This Section resembles S. 14 in its scope. Earned income and unearned income are taxed at different rates and both are graduated rates, if the total income earned and unearned does not exceed £2,500 (S. 14) the portion which is

"earned" is to bear the graduated rates applicable to earned income not exceeding that amount, notwithstanding that the person entitled has also unearned income, and similarly if the total income earned and unearned does not exceed £2,000 (S. 15) the portion which is unearned is to bear the graduated rate applicable to unearned income not exceeding that amount, notwithstanding that the person entitled has also earned income.

S. 16. Except as otherwise provided, any exemption, abatement or relief, under the preceding provisions of this part of the Act shall be given either by discharge or reduction of the assessment or repayment of excess, or by all or any of those means, as the case may require.

S. 17. A claimant shall not be entitled to exemption, abatement or relief in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person.

S. 18. Where an assessment has become final and conclusive for the purposes of tax for any "year of assessment" (see S. 237) that assessment shall also be final and conclusive in estimating total income from all sources for the purposes of any exemption, abatement or relief under the Act and no allowance or adjustment of liability on the ground of diminution of income or loss shall be taken into account in estimating such total income from all sources for such purposes unless that allowance or adjustment has been previously made on an application under the special provisions of this Act relating thereto. This provision corresponds to S. 18 of the Finance Act, 1915 (5 and 6 Geo. 5, c. 62), which in relation to super-tax is reproduced in S. 5 (2) of this Act (see that section for the decisions which led to this enactment).

S. 19. For the purpose of a claim under the preceding provisions, income arising from ownership of lands, etc., shall, subject to any allowance, reduction or relief authorised, be "annual value" as under rules of Schedule A. and similarly, as to income from occupation of lands, is to be "assessable value" as under rules of Schedule B., and where a claimant is both owner and occupier the Schedule A. annual value, plus the Schedule B. assessable value, shall be deemed the income arising from those lands, etc.

S. 20. Since a firm is to be jointly assessed (Rule 10 (1) of rules for cases I. and II., Schedule D.), in respect of a trade or profession (see also Schedule A., No. III., Rules 4, 5 and 7, for estimating annual value and Schedule A., No. VII., Rule 1, as to persons chargeable)—that is, since the assessment for income tax is in relation to the subject matter and the profits taxed may have to be subsequently divided up in shares between co-proprietors and co-partners—this Section provides the basis of the personal claim for relief. Co-parceners, joint tenants, or tenants in common of the profits of property; and joint tenants or tenants of land or tenements in partnership (in actual and joint occupation) entitled to profits in shares; and partners carrying on a trade, profession or vocation in shares, may claim exemption, abatement or relief according to their shares and interests—the income assessed is not, as of course, the income of the year, it is usually averaged from previous years; but the shares and interests into which the assessed income must be divided for purpose of personal relief depend on the actual year of assessment and if there were a change of proportions in the shares in that year that also would have to be taken into account (S. 20 (ii)). Profits arising from the occupation of lands are not to be separately charged if the lands are

let or underlet without the lessor relinquishing possession thereof, or if the lessee is not exclusively in possession or occupation of the lands (reproduces S. 168 of Income Tax Act, 1842).

S. 21. Total joint income of husband and wife not exceeding £500—in part profits of wife from business exercised by her personal labour, and, as to the rest, profits of husband unconnected with wife's business. The General Commissioners are to deal in such circumstances with claims for exemption, abatement or relief on the part of husband and wife as if the parties were not husband and wife, or, put differently, as if the aggregation of income between husband and wife, which obtains generally in income tax, were inapplicable and the husband and wife were independent unconnected persons. But any income of the husband accruing from the business of the wife or any source connected therewith is to be dealt with as part of the income of the wife; this would still leave the Section applicable in respect of the rest of the husband's income apparently. Example:—Total income of husband and wife £500. Husband's income from profession £80, from assisting his wife in business £100. Wife's income from business carried on by her personal labour £170, from investments £150. Apparently the husband's income for abatement, etc., is only £80 (though he really has £180) and he gets a total exemption to which in principle he is not entitled. The wife's income, in truth only £320 and entitled to abatement applicable to an income under £400, under the general scheme of this Section, loses it by the particular provision that she must add to it her husband's income, £100, arising from her business and so be treated as having £420 for the year and lose a benefit which otherwise she would get under the Section. "Business" is defined by the Section

as any trade (see S. 237), profession, employment or vocation or office or employment of profit and the expression "profits" includes any profits, gains or remuneration arising or accruing from the business and chargeable under Schedule D. or Schedule E.

S. 22. As to weekly wage-earners (defined S. 237) to whom the provisions of this Act as to quarterly assessment apply (see Schedule D. Rules applicable to Cases I. and II., Rule 2), *i.e.*, weekly wage-earners within S. 237 employed by way of manual labour and not as clerks, typists, draftsmen, or in other similar capacity. As appears elsewhere the weekly wage-earner is to be assessed quarterly on the wages of the quarter but for purposes of exemption, abatement or relief, the income for the year and the tax on the four quarters are to be looked at. The Commissioners have, however, power to allow under regulations exemption, abatement or relief, by reduction of the quarterly assessment or repayment of the quarterly tax.

S. 23. Where relief has been granted for any "year of assessment" under any provisions allowing reduction of assessment on any source of income, where profits of the year of assessment fall short of the statutory basis for computing them in the first instance, or in case of deprivation or loss of profits or gains from some "specific cause," (see p. 106) the amount of the assessment as reduced is to be deemed the income from that source in ascertaining total income from all sources for that year for exemption, abatement or relief.

S. 24 (1) Where by reason of the total income exceeding a certain limit (*a*) a higher rate of income tax or super-tax is payable, or (*b*) an exemption or abatement ceases to apply, or (*c*) a reduced exemption or abatement applies, the income tax or super-tax payable shall be reduced to the income tax or super-tax on the limit exceeded, at the

rate applicable to income not above that limit, plus (not tax but) the actual income in excess of the limit. Example: One rate applicable to incomes not exceeding £1,000 a year, another to incomes over £1,000 and not exceeding £1,500. Actual income of A. £1,010; A. is to pay income tax, at the rate applicable to incomes not above £1,000, on £1,000, plus £10 (the actual excess of income over £1,000) instead of income tax on £1,010 at the rate applicable to incomes over £1,000 and not over £1,500.

(2) When income tax is charged at different rates on different parts of the total income the deduction from total income required in calculating the maximum duty payable under this Section for the purpose of bringing the total income down to the limit shall be made from that part of the total income which is taxed at the lowest rate. The example under Sub-section (1) treats the income as all earned or all unearned but, if part is of one character and part is of another, problems may arise under Ss. 14 and 15 above. In a simple case of income of £1,010 (£500 earned and £510 unearned), if £10 is to be taken off the income before considering the rate or rates from which kind of income is it to be taken?—under this Sub-section there would be liability to pay at the £1,000 rate of the tax on £490 earned and £510 unearned, plus liability to pay £10 (the actual income over £1,000).

S. 25. Where, pursuant to a Will or Settlement, income is accumulated and goes contingently to some person on his attaining a specified age or marrying and the aggregate amount, in any year of assessment, of that income, of the income from any other fund subject to like trusts for accumulation, and of the total other income of that person from all sources (the three together being termed "the aggregate yearly income") is of such an

amount only as would entitle that person to total exemption from tax or to relief from tax ; that person shall, on making a claim for the purpose *within three years after the end of the year of assessment in which the contingency happens*, on proof, have the tax paid in respect of the income so accumulated during the period of accumulation adjusted on the basis afforded by the amount of his " aggregate yearly income " during those years, but in calculating that sum a deduction is to be made in respect of any relief already received. Example :—A. is 21 ; if he lives, and only if he lives, to attain 30 he becomes entitled to £5,000 which produces £4 per cent. interest ; he has, therefore, a contingent income of £200 a year for nine years and seeing that it is to be accumulated each year he will have rather more, viz., additional interest on an additional £200 ; his other income is £100 only. He can apply each year for and obtain relief on £100 (total exemption), the income of the fund is not then his and never may be. He attains 30 ; now income tax has been deducted at the highest rate on £200 a year (and more) for nine years, that income is now to be treated as his income retrospectively and the income tax deducted is to be treated as paid on his behalf. Therefore, he may apply for repayment of any excess which year by year the amount deducted would have entitled him to if the contingent income had been certainly his at the time. And he may apply for the nine years' relief within three years after the year of assessment in which he attains 30 (see this Section and S. 41). On the other hand he must re-open the account from the Government point of view also : thus, up to the age of 30 he got total exemption on £100, that being treated as his only income, for the purpose of relief under this Section he is to be treated as having had an income for nine years of £300 odd that would entitle him

to abatement on £120, he will get back the tax on £20 a year only for nine years, for in another form (total exemption) he has already had relief against £100 a year.

S. 26. No exemption, abatement or relief under this Act which depends wholly or partially on the total income of an individual from all sources is to be given to any person unless that person is resident in the United Kingdom (as to what constitutes "residence" see p. 92).

Provided that any person:—who is or has been employed in service of the Crown; who is employed in service of any Missionary Society abroad; who is in service of any of the native States under British Protectorate; who is resident in Isle of Man or Channel Islands; who is resident abroad for sake of health (satisfying the Commissioners on the point): and any widow in receipt of pension chargeable with tax and granted to her in consideration of employment of her late husband in service of Crown; shall be entitled to any exemption, abatement, or relief to which he or she would be entitled if resident in United Kingdom, and if his or her total income from all sources were calculated as including any income in respect of which tax may not be chargeable as well as income in respect of which tax is chargeable. Example:—A. is one of the excepted persons, a resident out of United Kingdom, he derives £100 a year from investments here and this part of his income is of course taxable here, he has an income not taxable here of £500, this income must be added to the £100 if he would get any exemption, abatement, or relief in respect of the tax deducted from his income of £100, on the footing that £600 was his income for that year, he is to get that relief and that only. In other words income, taxable or non-taxable, is in such cases reckoned together for the purpose of any relief which in the case of a resident depends on

total income. The resident is taxed on total income wherever arising, the exceptionally privileged non-resident is not debarred from relief that on the particular source of income would be obtainable by the resident, but he is not to be given greater relief by treating the part of his income taxable here as the only income he has.

S. 27. Any person claiming exemption, abatement, or relief under the preceding provisions shall within the time limited by the Act for delivery of lists, declarations or statements, or such further time as the General Commissioners for the division for any special reason allow, deliver to the Assessor of the parish in which he resides a notice of his claim together with a declaration and statement in the prescribed form signed by him setting forth (*a*) all particular sources of his income and amount from each, (*b*) all particulars of yearly interest or other annual payments reserved or charged thereon whereby his income is or may be diminished, and (*c*) all particulars of sums which he has charged or may be entitled to charge on account of tax against any other person or which he has deducted or may be entitled to deduct out of any payment to which he is or may be liable.

Any Surveyor of Taxes may examine the declaration and statement; the assessor is to transmit to the General Commissioners the notice of claim, declaration, and statement; and if the Surveyor does not object within 40 days or such further time as the General Commissioners may on just cause allow, the Commissioners may (*i.e.*, are to) allow it. If any of the property or profits is charged in another Division the Commissioners are to certify the allowance to the Commissioners of Inland Revenue who shall direct the appropriate relief to be given in the other division.

If the Surveyor objects in writing that he has reason to believe full particulars are not truly set forth, the claim

is to be heard and determined by way of appeal by the General Commissioners in like manner as other appeals under this Act and with like liability to penalties, and if the claim is allowed the Commissioners shall grant and issue all necessary certificates accordingly.

S. 28. Method of making and proving claims under the preceding provisions.

(1) Before General Commissioners for division in which claimant resides pursuant to the powers and provisions under which Schedule D. is ascertained and charged and whether he is personally charged in that division or not.

(2) If whole income of claimant arises from an office or employment of profit or from a pension or stipend under the jurisdiction of the Commissioners of a department or office, claim may be made to and allowed by those Commissioners.

(3) Persons out of the United Kingdom may claim by affidavit.

(4) On proof of inability of claimant to attend in person he may claim by guardian, trustee, attorney, agent or factor.

(5) Persons assessable on behalf of others may also make these claims on their behalf.

S. 29. On proof to General Commissioners that any tax (claim for exemption, abatement, or relief to which has been allowed) has been paid by deduction or otherwise, they certify the facts proved to Special Commissioners and the Special Commissioners are to issue order for repayment.

S. 30. Penalties for fraudulent claim. On the scope of the Section see Lord Advocate *v.* McLaren, (1905) 42 S.L.R. 762, decided upon Section 166 of Income Tax Act, 1842: the words "untruly declares" imply intentional deception.

S. 31. (1) Where, on an application made for the pur-

poses under the Act, tax is assessable separately on incomes of husband and wife as if they were not married (see rule 17 of General Rules for all Schedules).

(*a*) All the provisions of the Act as to claims for exemption, abatement, or relief, and the proof to be given with respect thereto are to apply as if they were not married, and a claim for the relief hereinbefore granted in the case where the wife carries on a separate business (see S. 21 above, see also General Rules, rule 16) may be made by the wife as well as by the husband.

(*b*) The income of the husband and wife shall be treated as one in estimating the amount to be repaid or allowed in respect of any exemption, abatement, or relief which depends wholly or partially on total income (except so far as otherwise required for the purpose of dealing with any claim for exemption, abatement, or relief made in a case (above) where the wife carries on a separate business as aforesaid) (see S. 21 above) and the total amount of any exemption, abatement, or relief given in respect of the incomes of husband and wife shall not exceed that which would have been given if any such application as aforesaid had not been made.

(*c*) The benefit of any such exemption, abatement or relief may be given either by way of reduction of assessment, or by repayment of any excess of tax which has been paid, or by both of those means, as the case requires, and shall in the case of relief in respect of earned incomes (including any exemption, abatement, or relief given in respect of the profits of a wife from a business carried on separately from her husband as aforesaid (S. 21)) be given in proportion to the income earned respectively by the husband and the wife, and in the case of relief given in respect of payments for life insurance or deferred annuities be given to the husband or wife, as the case

is to be heard and determined by way of appeal by the General Commissioners in like manner as other appeals under this Act and with like liability to penalties, and if the claim is allowed the Commissioners shall grant and issue all necessary certificates accordingly.

S. 28. Method of making and proving claims under the preceding provisions.

(1) Before General Commissioners for division in which claimant resides pursuant to the powers and provisions under which Schedule D. is ascertained and charged and whether he is personally charged in that division or not.

(2) If whole income of claimant arises from an office or employment of profit or from a pension or stipend under the jurisdiction of the Commissioners of a department or office, claim may be made to and allowed by those Commissioners.

(3) Persons out of the United Kingdom may claim by affidavit.

(4) On proof of inability of claimant to attend in person he may claim by guardian, trustee, attorney, agent or factor.

(5) Persons assessable on behalf of others may also make these claims on their behalf.

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S. 30. Penalties for fraudulent claim. On the scope of the Section see Lord Advocate *v.* McLaren, (1905) 42 S.L.R. 762, decided upon Section 166 of Income Tax Act, 1842: the words "untruly declares" imply intentional deception.

S. 31. (1) Where, on an application made for the pur-

to the Special Commissioners he is to be entitled to repayment of tax on the amount deductible.

(3) (*a*) The allowance is not to exceed one-sixth of the total chargeable income from all sources estimated in accordance with the Act ;

(*b*) It is not to entitle any person to claim any exemption, abatement, or relief, on the ground that his total income is thereby reduced below any prescribed amount ;

(*c*) Nor is it to exceed, in respect of any premium or other payment payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not), seven per cent. of the actual capital sum assured, and, in calculating any such capital sum, no account shall be taken of any sum payable on the happening of any other contingency, or of the value of any premiums agreed to be returned, or of any benefit by way of bonus, or otherwise, which is to be or may be received either before or after death, either by the person paying the premium, or by any other person, and which is not the sum actually assured ;

(*d*) Nor is it to exceed £100 in all.

To get the benefit of the Section the premium must be paid by the insured, not lent by the insurer on the security of the policy, Hunter *v.* The King, (1904) A.C. 161.

Sub-Section (3) (*c*) meets the case of Gould *v.* Curtis, (1913) 3 K.B. 84 ; the policy in that case secured £100 if assured died within 15 years, £200 if he lived for 15 years—held to be an " assurance on his life " and the full premium claimable as a deduction. Now, " the actual capital sum assured " (on death) with the addition " and in calculating any such capital sum, no account shall be taken of any sum payable on the happening of any other contingency " (*i.e.*, other than death) has the effect that you must not take the highest sum secured

by an alternative contract of life insurance as the sum assured, but only the sum payable in the event of death, *i.e.*, on the facts of Gould *v.* Curtis, under the present provision, the only deduction allowed would be not the full premium paid but only the portion of that premium which is represented by 7 per cent. on £100 (the only sum payable on death). The deduction is not to be more than one-sixth of income, further it is not to be more than 7 per cent. of the sum assured *on death* which may be a great deal less than the premium and less than one-sixth of the income also: and the sum assured on death whereby you are to measure the 7 per cent. limitation is carefully circumscribed.

(*e*) No allowance shall, as regards insurances or contracts for deferred annuities made after the twenty-second day of June, nineteen hundred and sixteen,

(i) be given at a greater rate of tax than three shillings in the pound;

(ii) be given except in respect of premiums or other payments payable on policies for securing a capital sum on death, whether in conjunction with any other benefit or not; or

(iii) be given in respect of premiums or payments payable during the period of deferment in respect of a policy of deferred assurance:

Provided that the two last-mentioned restrictions shall not affect premiums or payments payable on policies or contracts made in connection with any superannuation or *bona fide* pension scheme for the benefit of the employees of any employer or of persons engaged in any particular trade, profession, vocation or business, or on any policy taken out by a teacher in a secondary school pending the establishment of a superannuation or pension scheme for those teachers.

(4) This section shall apply to all war insurance premiums, whether payable annually or not.

(5) War insurance premiums shall not be taken into account in calculating the aforesaid limits of one-sixth of the total income from all sources, or of seven per cent., or of one hundred pounds.

(6) In this Section the expression " war insurance premiums " means any additional premium or other sum paid in order to extend an existing life insurance policy to risks arising from war or war service abroad, and any part of any premium or other sum paid in respect of a life insurance policy covering those risks, or either of them, which appears to the Commissioners to whom the claim for relief is made to be attributable to those risks, or either of them.

See S. 45 as to calculation, during the war, of the limit of relief by reference to pre-war income if that is greater (*post* p. 179).

(7) Where premiums in respect of any insurance effected with a registered friendly society are made payable for shorter periods than three months, a person who claims relief under this section must, in order to obtain relief, produce to the Surveyor a certificate, signed by an officer of the society, specifying the correct amount of premiums paid during the year of assessment.

A person who wilfully gives or produces a false certificate shall forfeit the sum of fifty pounds.

S. 33. (1) Where a Life Assurance Company (S. 237), or Company whose main business is making investments and the principal part of whose income is derived therefrom, or any Savings Bank, proves to the Special Commissioners that for any year of assessment it has been charged to tax by deduction or otherwise (*i.e.*, under Case III. of Schedule D.) and not on its profits (under Case I, Schedule D.) (the Crown can elect under which

case it will charge tax, see *supra*) the Company or Bank shall be entitled to repayment of so much of the tax paid by it as equals the tax on expenses of management (including Commissions) for that year. But such relief shall not be given under this Section so as to make tax (*i.e.*, on dividends and interest of investments less expenses) less than it would have been on profits (*i.e.*, under Case I. of Schedule D.). Further (1) fines, fees, or profits from reversions in case of an Assurance Company and in case of any other Company or Savings Bank income or profits from untaxed sources are to be deducted from the expenses of management for the year, and (2) in calculating profits from reversions the Company may set off against those profits loss arising from reversions for any previous year during which any enactment granting this relief was in operation (*i.e.*, for the financial year 1915-16 and any subsequent year these provisions were enacted by Finance Act, 1915 (5 and 6 Geo. 5 c. 62)).

(2) Notice of claim is to be given, with particulars, in writing to Surveyor of Taxes within twelve months after year of assessment to which claim relates, and if Surveyor objects to claim, Special Commissioners are to hear and determine it as in the case of an appeal against an assessment under Schedule D. and the provisions of this Act relating to the statement of a case for opinion of High Court on a point of law shall apply.

(3) A Company or bank is not to be entitled to relief under this Section in respect of any expenses as to which relief may be claimed or allowed under rules 7 and 8 of No. V. of Schedule A.

(4) Where an Assurance Company, not having its head office in United Kingdom, is charged under Case III. of Schedule D. on a proportion of the income from investments of its life assurance fund, or on a basis substituted therefor, the relief in respect of expenses of management

shall be calculated by reference to a like proportion of its total expenses of management for the year estimated according to the provisions of this Act (see Rule 3 of Rules applicable to Case III., Schedule D.)

(5) Where income arising from the investments of the foreign life assurance fund (S. 237, p. 213) of an Assurance Company has been relieved from tax in pursuance of this Act a corresponding reduction shall be made in the relief granted under this Section in respect of the expenses of management.

S. 34 (1) Where any person sustains a loss in any trade (S. 237) profession, employment, or vocation (carried on by him solely or in partnership) or in the occupation of lands for the purpose of husbandry only or in the occupation of woodlands in respect of which he has elected to be taxed under Schedule D. he may, on giving notice in writing to Surveyor of Taxes within six months after the year of assessment, apply to General Commissioners or Special Commissioners for an adjustment of his liability by reference to the loss and the aggregate amount of his income for that year estimated according to this Act.

(2) Commissioners on proof of loss and its amount and of payment of tax may give certificate authorizing repayment of tax on income equal to the loss, and the certificate may extend to give any exemption, abatement, or relief depending on total income from all sources and on receipt of certificate Commissioners of Inland Revenue to order repayment.

(3) Penalty for "fraud or contrivance" under the Section.

(4) Where repayment has been made to a person for any year under this Section he shall not be entitled in computing the amount of the assessment for any subsequent year to a deduction of any portion of the amount in respect of which such repayment has been obtained.

S. 35 (Applies to Scotland only).

S. 36 (1) Repayment of tax, on proof to Special Commissioners, is allowed to a person who pays interest payable in United Kingdom on an advance from any Banker carrying on *bona fide* banking business in United Kingdom if such interest has been paid by him to the bank out of profits and gains charged to tax without deduction of tax.

(2) Like repayment on like proof is allowed in respect of interest (not being yearly interest) payable in United Kingdom on an advance from a person *bona fide* carrying on business as a member of a Stock Exchange in United Kingdom, or, in the opinion of the Commissioners of Inland Revenue *bona fide* carrying on the business of a discount house in the United Kingdom. But it is a condition of repayment that the Commissioners of Inland Revenue are satisfied that the interest has been or will be brought into account by the lender for purposes of his income tax.

(Ss. 37, 38, 39 and 40 are dealt with under the various Schedules to which they relate.)

S. 41. Save as hereinbefore provided (S. 25) in the case of income accumulated until the happening of a contingency, no claim for repayment of tax under the Act is to be allowed unless it is made within three years next after the end of the year of assessment to which it relates.

PART IV.

Special Provisions.

S. 42. Where any person during any year of assessment has served or is serving as a member of any of the Naval or Military forces of the Crown, or of the Air Force (see S. 52) or in service of a naval or military charac-

ter in connection with the war for which payment is made out of money provided by Parliament, or in any work abroad of the British Red Cross Society, the Saint John Ambulance Association, or any other body with similar objects, or has served or serves for not less than three months as master or member of the crew of any ship or fishing boat, the rate on *his pay in connection with that service* is reduced to a rate which varies with his total income from all sources as follows :—

Rate on portion of Income consisting of pay.	Income from all Sources.
9d.	not over £300
1s. 3d.	£300 to £500
1s. 9d.	£500 to £1,000
2s. 3d.	£1,000 to £1,500
2s. 9d.	£1,500 to £2,000
3s. 3d.	£2,000 to £2,500
3s. 6d.	exceeding £2,500

It will be noticed that this Section requires express continuance for each year, for by its terms it applies only to a year of assessment " as respects which this Section is continued in force by any Act ". The relief is to be in addition to and not in derogation of any other exemption, abatement, or other relief under the Act. The Section provides that earned income consisting of pay is to be taxed by reference to these rates and not to those applicable to earned incomes generally, and gives to persons within the Section total exemption when income from all sources does not exceed £160 (instead of £130 in case of other persons) and abatement on £160 on income not exceeding £300 (instead of abatement on £120). Further deductions on account of abatement or relief in respect of premiums (life assurance or deferred annuities) children, wife and dependent relations (see Ss. 32, 12 and 13)

which, in the ordinary case, are attributed to "earned" income, are, under this Section, only to fall on the pay after attributing them to all other earned income: *i.e.*, any relief given in these respects would result in a return to him not of the rate exigible on his pay but of the higher rate exigible in respect of his other earned income until that source is exhausted. All the provisions of the Act relating to claims for exemption, abatement, or relief and the attendant proof required are to apply to claims for relief under this Section.

S. 43. When a person assessed under Schedule D. proves a diminution of profits due to circumstances attributable directly or indirectly to the present war (whether those circumstances are a "specific cause" or not within Miscellaneous Rules applicable to Schedule D. Rule 3 (1)), relief is to be given as follows:—

On proof within or at the end of any year of assessment (as to which this provision is continued in force by any Act) that the profits of the year have fallen short of the assessment (based of course on average of previous years) the assessment shall be amended "as the case may require" and tax overpaid on that basis be repaid. This provision applies without qualification if the person assessed is one of the persons enumerated in S. 42 (who is serving or has served during any year of assessment in naval or military or air force (S. 52) or Red Cross, etc., work abroad) in the case of other persons Sub-section (*b*) provides that no reduction or repayment is to be made beyond the profits for a year "on the average of the last three years including the year of assessment" ("*last* three years" are taken from the point of time at which the relief is claimable). The provisions of the Act as to statement of a case on a point of law are to apply to cases in which relief is claimed under this Section.

S. 44. If the income of any individual for any year of

assessment (as to which this Section is continued in force by any Act) falls short of assessed income by more than 10 per cent., he is on proof to be liable only on his actual income for the year and any income tax paid on the assessment previously made is to be repaid. S. 45. In any year of assessment during any part of which the present war continues the total income from all sources (within S. 32 (3) (*a*) which limits relief in respect of premiums on life assurance to one-sixth thereof) is to be taken to be the total income, etc., for the year ending 5th April, 1914, when that income is greater (*i.e.*, relief from tax may be given during the war on more than one-sixth of the then assessable income but not on more than one-sixth of the income assessable in the immediate pre-war year of assessment, this is, of course, subject to the other limitations on quantum of relief).

S. 46. When the Treasury have issued securities free of income tax, or super-tax, while in the beneficial ownership of persons not ordinarily resident in the United Kingdom, the interest of such securities is to be exempt. If such securities form part of the " foreign life assurance fund " of an " Assurance Company " (both are defined by S. 237) the income arising from these securities if applied for the purposes of that fund or reinvested so as to form part of that fund, shall not be liable to tax. Where the Special Commissioners are satisfied that any income arising abroad from the investments of the foreign life assurance fund of an assurance company has been remitted to the United Kingdom and invested as part of the investments of that fund in any such securities, that income shall not be liable to tax and any levied thereon is to be repaid. When any securities have been issued in United States of America, under Treasury authority, by a Municipal Corporation, County Council or other local authority (recognized as such for

the purposes of this sub-section by the Local Government Board, and the Metropolitan Water Board is expressly mentioned) in the United Kingdom to raise money they are authorized to borrow; no tax or super-tax is to be levied in respect of them unless they are held by persons domiciled in the United Kingdom or British subjects ordinarily resident there.

S. 47. The accumulated interest in War Savings Certificates for the original period and any extension under S. 41 of the Finance Act, 1918, is exempt from tax as long as the individual holding does not exceed the amount specified by Treasury Regulations.

S. 48. Securities issued in connection with any Government loan for the present war subject to the condition that the interest should be exempt from income tax, but not from Super-tax—such securities are to be so exempt. For the purpose of Super-tax and relief from income tax depending on total income from all sources, the interest on such securities is to be reckoned as if the sum actually received represented net income, after deduction of tax at the highest current rate; but this provision does not entitle any person to repayment of any sum on account of tax—on the ground that he is not to be treated as having paid tax at such rate.

S. 49. (1) Interest on any stock inscribed in the Post Office Stock Register under the War Loan (Supplemental Provisions) Act, 1915, where nominal amount of such stock does not exceed £200, is to be paid without deduction of tax; but any such interest is to be charged under Case III. of Schedule D.

(2) The Treasury may direct that any Exchequer bonds issued during the present war and a period of six months thereafter, and any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending them, shall be subject to the same conditions, *i.e.*, interest paid

without deduction, but assessable under Case III. of Schedule D.

(3) Where interest on any securities issued in connection with a Government loan raised for the present war is paid without deduction of tax any person paying such interest or receiving such interest on behalf of a registered and inscribed holder, and any intermediary in the purchase of such securities, must, on being required by Commissioners of Inland Revenue, furnish names and addresses of payees, persons for whom interest received, and those for whom the securities were purchased, the amount of interest so paid or received and the amount of the securities so purchased.

S. 50. On proof to Special Commissioners that actual income from all sources of any individual charged to Super-tax for any year of assessment is or will be less than two-thirds of the income on which he is liable to be charged (*i.e.*, income from all sources of previous year) he may postpone payment of the difference between super-tax on income from all sources of previous year and income from all sources in year of assessment and the postponed payment is to become payable on the 1st day of January next, after the end of the year of assessment (*i.e.*, in effect a year's grace since super-tax is payable like income tax on the 1st January in the year of assessment, if assessed then); and yet another year's grace for payment of the postponed balance may be obtained on similar proof for the following year. (Super-tax for 1916-17, assessable on income from all sources for year 1915-16 and normally payable January 1st, 1917, if actual income for 1916-17 is less than two-thirds of actual income in 1915-16 he may postpone payment until January 1st, 1918, and even until January 1st, 1919, if he can show that income for 1917-18 is less than two-thirds of income for 1916-17.)

S. 51. Where it is proved to Special Commissioners that any individual has during the present war been during any year of assessment serving as a member of the naval or military forces of the Crown, or of the air force, or in Red Cross, etc., work abroad, and that his total income from all sources for the year of assessment was less than his total income from all sources for the previous year, his total income for the year of assessment is for Super-tax to be substituted for the ordinary basis (income from all sources of previous year) and if tax has been paid on the ordinary basis (income of previous year) repayment is to be made. For the purpose of relief given to such persons naval, military, and air force service is defined: such a person must have been on the active list of the navy: or in the army, or air force, either with the colours or as an airman in air force service or as an officer on full pay or a rate of pay which seems to the Income Tax Commissioners to be equivalent to full pay and either out of the British Islands or for at least one month continuously in the British Islands (S. 52).

S. 53 (1) When in calculating for the purposes of Part II. of the Munitions of War Act, 1915, profits of a controlled establishment a deduction has been allowed under that part of that Act for exceptional depreciation or obsolescence of buildings, plant or machinery, and a similar deduction has not been made before income tax was paid in respect of such profits, a repayment of tax in respect of the amount deductible is to be made. Such repayment is to be made in respect of the year of assessment which includes the end of the Munitions period of assessment in respect of which the deductions have been allowed and shall be deemed to have effected a reduction of the income tax assessment by the amount on which tax has been so repaid.

(2) If a reduction in respect of similar depreciation or

obsolescence has been allowed for the purposes of excess profits duty in calculating the profits of a controlled establishment, during the period of control, the above provision is to apply, subject to needful modification, to such deduction ; but repayment of tax in respect of the same deduction must be made under the first or second subsection, not both.

(3) The provisions of the Act for allowing deduction in succeeding years for wear and tear of plant, etc., when full effect cannot be given in the year in which it is properly claimable—the reference is to Rule 6 (3) of Rules applicable to Cases I. and II. Schedule D.—are to apply with the necessary modifications.

(4) Any application for relief under this Section is to be made to the Commissioners by whom the income tax was assessed, they are on proof to certify to the Commissioners of Inland Revenue the sum repayable and repayment is to be made accordingly by Commissioners of Inland Revenue.

S. 54. As to stocks, shares and other securities, specified in any list published by the Treasury in the Gazette, and for the time being in force, which the Treasury are willing to purchase in connection with arrangements for maintenance of foreign exchanges, the income therefrom is at present subject to an additional duty of income tax and such tax is regulated as follows :—

The tax does not attach if the securities are within 28 days after publication of the Treasury list placed at the absolute disposal of the Treasury ; nor, after they have been placed conditionally at the Treasury's disposal, if they ultimately become at the absolute disposal of the Treasury without unreasonable delay on the part of the person placing them at disposal ; nor if the securities have not been placed at Treasury disposal from circumstances beyond the control of the holders ; nor if the

securities are held outside the United Kingdom by persons not domiciled in United Kingdom, or by Trustees who by the laws of the country where they are held or the terms of their trust may not place them at the Treasury's disposal and are not entitled to statutory indemnity if the securities were so held before 29th May, 1916; or where the securities are under the jurisdiction of some foreign court, the laws of which do not admit of the securities being placed at the Treasury disposal; or in respect of securities deposited as security for a loan from persons outside the United Kingdom before 29th May, 1916, or after that date with Treasury approval, and if securities cannot be released without impairing the security for the loan; or in respect of securities shown to Special Commissioners to be held by a Company or persons concerned in trade or business outside United Kingdom as a condition imposed in that country of carrying on that trade or business. If the securities are offered for deposit and accepted therefor they are, while deposited, to be deemed at the absolute disposal of the Treasury. The statutory power to require delivery of statements for purposes of tax applies to income to which this Section applies. One of two trustees, and half or more than half of more than two trustees, with the concurrence of the beneficiaries entitled to the income may place the securities at Treasury disposal, and such action shall be as valid as if all the trustees had consented and joined. A person is not to be entitled to any exemption, abatement or relief under this Act (other than relief depending solely on residence or domicile) in respect of this additional duty, but in all other respects the provisions of the Act as to persons chargeable, assessments, appeals, collection, recovery, cases to be stated for the High Court, are, so far as they are applicable, to apply. The Treasury may give

directions for charging the additional duty by direct assessment instead of by deduction.

S. 55. Where any person who has paid tax in accordance with the provisions of this Act for any year of assessment on any part of his income at a rate exceeding 3s. 6d. proves to Special Commissioners payment also of income tax (under any law in force in any British possession or tax which appears to correspond to the income tax in the United Kingdom) on the same part of his income he is to be entitled to repayment of the income tax payable in United Kingdom above 3s. 6d. in the pound, or where the Colonial income tax is less than the excess of United Kingdom income tax over 3s. 6d. an amount equal to the Colonial Income Tax.

In Rover *v.* South African Breweries, (1918) 2 Ch. 233, an English Company had paid Colonial Income Tax at 2s. in the pound, it was assessed in this country to 5s. in the pound income tax on its profits but pursuant to these provisions only required to pay 3s. 6d. in the pound. It claimed, however, to deduct British income tax at 5s. in the pound and keep the 1s. 6d. in the pound. Held, that it was only entitled to deduct from its dividends the 3s. 6d. in the pound. The case applies to the construction of the Section the principle laid down in A.G. *v.* Ashton Gas Company, (1906) A.C. 11, and Brooke *v.* Commissioners of Inland Revenue, (1918) 1 K.B. 257, that the Company's payment of tax is the payment by the shareholder through his agent.

S. 56. The provisions of the Act relating to deduction to be allowed in respect of diminished value by reason of wear and tear are to have effect as if the reference therein to diminished value by reason of wear and tear during the year of any machinery or plant included references to diminished values by reason of its being temporarily out of use at any time during the year through circum-

stances attributable directly or indirectly to the present war.

Part V., Administration, is noted in the introduction pp. 1-11 above.

PART VI.

Assessment.

Income Tax is a tax for a year, though, as decided in Stewart *v.* Thames Conservators, (1908) 1 K.B. 893, its continuity prevents it being treated for all purposes as a new tax each year. The proceedings before assessment are the issue by the General Commissioners of a precept to the Assessors within their division, or district, requiring them to publish the general notice to be affixed to the Church door of each parish or place. This requires all persons liable, to make out lists, declarations and statements and deliver them to the assessor within a time limited by the precept, not later than 21 days from the precept, the precept also directs the assessors to give a particular notice to every person chargeable within the limits for which they act. These notices oblige persons chargeable to make their return necessary for assessment. The return is of annual value of lands in their occupation and of profits and gains under each Schedule estimated as prescribed by the Act. Persons acting in any character on behalf of any incapacitated person (defined by S. 237 as any infant, married woman, lunatic, idiot, or insane person) or on behalf of a person not resident in the United Kingdom, who, by reason of incapacity or non-residence, cannot be personally charged, must deliver a similar statement of profits or gains in respect of which tax is to be charged on them respectively on account of such other person. A person coming into a parish in

which he has not been charged to tax (*i.e.*, after the notices have been served and the time elapsed) may be required to specify where they have been assessed or if not to make a return. The parish in which a person is resident at the time of the publication of the general notice is the place to assess him, though if not assessed then he may be assessed in the parish where he resides at a later date (S. 102 (3)). Every person who, in any capacity, is in receipt of money or value, or of profits or gains taxable, belonging to another who is chargeable, or would be if he were resident in the United Kingdom and not an incapacitated person, must deliver a statement thereof, of such other person's name and address, and a declaration whether such other person is of full age, a married woman living with her husband, or a married woman whose husband is not accountable for payment of any tax charged on her, or is resident in the United Kingdom, or is an incapacitated person. Persons are required to deliver lists of lodgers, etc., residing in their houses. Employers are to deliver lists of their employees and of payments to them, unless the year's remuneration is below the limit for total exemption. If the employer is a body of persons (defined S. 237) the Secretary or other officer is the employer for this purpose, and directors and managers are deemed employed by him. In the case of weekly wage earners (defined S. 237) returns can be required at intervals fixed by regulations of Commissioners of Inland Revenue. Default or wilful delay in delivering a true and correct list, declaration or statement, is subject to penalties and the Commissioners are to proceed to assess or cause to be assessed every such person who makes default (S. 107 (2)). The assessor has to deliver lists to the Surveyor of Taxes showing what he has done and transmit the information obtained by him, and to make oath before the General Commissioners show-

ing compliance with his statutory duties. The Surveyor of Taxes has power to serve notices in cases where they have not been given. Assessments made under Schedules A. and B. for any parish are to contain the full and just annual value of all lands, estimated as directed by the Act, and the names of the occupiers and proprietors. If no return is received from a person liable to tax the assessor is to the best of his judgment to assess amount to which he ought to be charged under Schedules A., B. and E., and to estimate the amount at which he ought to be charged under Schedule D. and make a return to the Commissioners of the person's name and address and any other particulars the Commissioners may require (S. 112), and on or before the day appointed by the General Commissioners every assessor is to deliver to them his certificates of assessment under Schedules A., B. and E. and all statements and lists received by him, and the General Commissioners deliver all these assessments, estimates and lists to the Surveyor for examination. Power to inspect the books kept by parish officers for the purposes of comparing the assessments to income tax with the last poor rate is conferred. Further, in default of a return by the occupier or if the Commissioners are dissatisfied with any return made, the assessor or surveyor may, on signed order of the General Commissioners, and after two days' notice to the occupier, with the assistance of a person of skill named in the order, survey the property and ascertain the annual value (a power not applying within the administrative County of London). Powers for assessors for public departments, for which Commissioners are officially appointed, are given. The General Commissioners are to take into consideration the assessments under Schedules A., B. and E. delivered by the assessors, after they have been examined by the Surveyor of Taxes, and if he has

not objected to them and the Commissioners are satisfied, they are to sign and allow them. If the Surveyor objects and applies for revision, and suggests in writing to the Commissioners any error, mistake, omission, or fraud, the Commissioners, to the best of their judgment, are to rectify the assessment. Statements of profits or gains under Schedule D. are, unless an assessment thereon is required to be made by the Special Commissioners, to be laid before the Additional Commissioners. The Surveyor of Taxes is to examine the statements, and if the Additional Commissioners are satisfied and the Surveyor makes no objection thereto, which he is authorized to make for sufficient cause, they are to direct an assessment to be made in accordance with the statement; if the Surveyor then declares himself dissatisfied with the determination of the Additional Commissioners, as not being in accordance with the true intent and meaning of the Act, he may require them to state and sign a case giving their determination thereon for the opinion of the General Commissioners for the Division. The case so stated and signed is to be delivered to the Surveyor who shall transmit it to the General Commissioners, who are to return it with their opinion subscribed, and the assessment is to be altered or confirmed accordingly. If (*a*) a person makes default in the delivery of a statement in respect of any tax under Schedule D. with which he has not been otherwise charged or (*b*) the Additional Commissioners are not satisfied with a statement which has been delivered, or have received any information as to its insufficiency, or (*c*) the Surveyor of taxes makes an objection in writing to a statement (as before mentioned) setting forth the cause thereof, the Additional Commissioners shall make an assessment on the person concerned in such sum, as, according to the best of their judgment, ought to be charged on him. The Additional

Commissioners may refer any statement to the General Commissioners without assessment by delivering to them a case in writing setting forth the matters in question, either of law *or fact*, the General Commissioners shall enquire into the merits of the statement, as they are authorized to do in case of an appeal against an assessment, and thereupon an assessment shall be made in accordance with the determination of the General Commissioners. The Surveyor of Taxes may examine any assessment made by the Additional Commissioners, before it is delivered to the General Commissioners, and if he discovers any error requiring amendment he shall certify the same to the Commissioners by whom the assessment was made, who, on sufficient cause shown to them, shall make any amendment they consider is required. If the Surveyor of Taxes makes any objection in writing to the Additional Commissioners, which he is authorized to do on sufficient cause, as to the amount of an assessment made by them, they shall certify his objection, with their reasons for making the assessment and any information they have obtained respecting it, to the General Commissioners. The Surveyor of Taxes shall give notice of his objection and particulars thereof to the person assessed in order that he may appear before the General Commissioners in support of the assessment. The Additional Commissioners are to make out and enter in books provided, certificates of assessments—distinguishing the parish for which each assessment is made—containing names and surnames and addresses of the persons assessed and the sums payable by them, and sign them; then the returns (statements) and any particulars furnished by the assessors, under cover sealed up, are to be delivered from time to time to the General Commissioners, but no notice of any assessment is to be given to the person assessed until 14 days after the Sur-

veyor of Taxes has had notice of delivery of signed assessments to the General Commissioners. These assessments under Schedule D., certified and delivered to the General Commissioners by the Additional Commissioners, shall be allowed and confirmed by the General Commissioners after time for hearing appeals against such assessment has expired (S 122) ; see Kensington I.T.C. *v.* Aramayo, (1916) 1 A.C. 215 :—the Additional Commissioners make a preliminary ascertainment of the amount of duty to be charged, subject to the confirmation by the General Commissioners whose function it is to impose liability on the tax payer, and the assessment is not operative until so confirmed. A person chargeable under Schedule D. not claiming total exemption (at present income under £130 from all sources) may require to be assessed by the Special Commissioners instead of Additional Commissioners or General Commissioners ; in that case he delivers notice of his request to the assessor of the parish and statement of his profits for transmission to the Surveyor of Taxes. The Surveyor of Taxes is to assess and deliver certificate thereof with statement to Special Commissioners who are to examine and allow such assessment as appears to them just, subject to appeal. The Special Commissioners notify the charge to the person charged who is to pay to the proper officer (S. 123). The Special Commissioners are also to assess profits or gains from a railway ; the assessment is to be notified to the Secretary (S. 124).

Power is given to make additional assessments : if the Surveyor discovers that properties or profits have been omitted from first assessments or statements, or full and proper statements have not been delivered by persons chargeable, or such persons have not been assessed, or have been undercharged in first assessment, or that a person chargeable has obtained in his first assessment any

allowance, deduction, exemption, abatement or relief, not authorized ; then,

if tax is chargeable under Schedules A., B. or E. :—

If first assessments have not been signed and allowed, the Surveyor is to amend and charge the proper amount ; or if first assessments have been signed he must certify particulars to the General Commissioners who are to sign and allow an additional first assessment in accordance therewith —subject to appeal and other proceedings as a first assessment.

If tax is chargeable under Schedule D. :—

Additional Commissioners are to make additional first assessment subject to objection by Surveyor of Taxes and appeal.

An assessment may be amended or an additional first assessment may be made at any time not later than three years after the expiration of the year of assessment (S. 125). As to need for notice of an additional first assessment see Berry *v.* Farrow, (1914) 1 K.B. 632.

If the Surveyor of Taxes discovers that a person liable to tax has not been charged in respect thereof in any first or additional first assessment he may at any time, within three years after the expiration of the year of assessment for which the person ought to have been charged, surcharge, to the best of his judgment, the person liable, to the amount which ought to have been charged for that year. He must certify the particulars of the omission and surcharge to the General Commissioners and give notice to person surcharged. The General Commissioners on delivery of the certificate and on oath made of service of notice on person surcharged are to sign and allow the certificate subject to appeal. Ten days must elapse between service of notice of surcharge and signing the certificate (S. 126). A person to whom notice of surcharge has been given may, whether he has previously

delivered a statement or not, within ten days of service of notice deliver a true and perfect return or give notice to Surveyor that he abides by his previous statement: to such return or notice must be annexed a declaration (signed by the person to whom the notice of surcharge was given and attested by one or more credible witnesses) stating, as the case may require, grounds and cause of neglect to deliver statement, or of omission in statement delivered, or grounds and cause of every claim of exemption, abatement, relief, allowance or deduction, made in such statement, and that the statement by which he abides or the return to which the declaration is annexed is a true and perfect return to the best of his judgment and belief and that any neglect, omission or claim was not made with intent to defraud the revenue. If such a declaration is false and wilfully and fraudulently made, a misdemeanour is committed, punishable with six months imprisonment and fine not exceeding treble the tax surcharged, the venue is to be laid in the county in which the declaration was exhibited to the General Commissioners. If the Surveyor of Taxes is satisfied with the statement or return and the declaration he may certify his satisfaction therewith to the General Commissioners who shall thereupon charge the person surcharged on the amount set forth in the statement or return in the single rate of tax (S. 127).

The Surveyor of Taxes may object to any such statement, return or declaration, and in that case is to serve notice of objection on person surcharged and certify the statement or return, and the declaration with the cause of his objection, to the General Commissioners who are thereupon to charge tax in accordance with the certificate of objection, and no abatement is to be made therefrom except on appeal by the person surcharged (S. 128). If within ten days after service of notice of surcharge the

person surcharged delivers a return and declaration to which the Surveyor objects, that delivery operates as a notice of appeal to the General Commissioners against the surcharge: if the person surcharged does not within ten days after notice of surcharge deliver a return or declaration he may appear on the day appointed for hearing appeals against surcharge and deliver a return and declaration, and Commissioners may hear and determine the matter though no notice of appeal has been given, but if he does not appear in person or by agent or appears without delivering a return and a declaration the Commissioners are to confirm the certificate of surcharge: no surcharge is to be allowed and signed unless the certificate has been delivered to the General Commissioners within three years after the expiration of the year of assessment in respect of which the surcharge is made (S. 129). a certificate of surcharge is to be sufficient authority to the General Commissioners for causing supplementary assessments to be made from time to time. supplementary assessments include the surcharges and any amendments determined by the Commissioners, all treble tax or any part thereof, and all penalties imposed by the Commissioners for offences under the Act (S. 130). Power is given to the Commissioners of Inland Revenue to make regulations generally with respect to weekly wage earners (defined S. 237) assessable quarterly under the Act (see Rule 2 (2) Rules applicable to Cases I. and II., Schedule D.) with respect to assessment charge and collection of income tax—in particular the regulations may delegate assessment and charge to a Surveyor of Taxes and apply the rules of Schedule E., not otherwise applicable, but the right of appeal to General Commissioners must remain (S. 131).

A penalty of treble the tax attempted to be evaded may be imposed by the General Commissioners for the

division in which the person has been charged or is chargeable for fraudulent change of place of residence or fraudulent conversion of property—for a false or fraudulent statement, or Schedule, or any falsehood, wilful neglect, fraud, art or contrivance, in cases where a person who ought to be charged is not by reason thereof duly assessed and a penalty of £50 is also imposed on anyone who knowingly and wilfully aids, abets, assists, incites or induces, another to deliver a false or fraudulent account, statement, or declaration of profits or yearly rent or value (S. 132).

PART VII.

Appeals.

Assessments once made are only to be altered by the General Commissioners or their clerk where expressly authorized by the Act. On appeal the determination of the Commissioners is final subject to order of the Court when a case has been required. Where an objection has been made by the Surveyor of Taxes to an assessment and the objection has been dealt with and determined on appeal the Surveyor shall not thereafter make any further charge for the same year on that person in respect of the same matter, property or profits, included in that assessment (S. 133).

Notices of assessments under Schedules A. and B. and time for hearing appeals are to be given—either by general notice of day of appeal affixed to the Church door or other public place in the parish (copy of the assessment in that case to be delivered to the assessor for inspection by the assessed) or by notifying to each person the amount of his assessment and the day of appeal. As to assessments under Schedule D. there

must be a notice limiting a reasonable time for hearing appeals (S. 134), and notice of appeal meetings is to be given to Surveyor of Taxes (S. 135).

A person aggrieved by an assessment made on him by the Additional Commissioners, an assessor, or a Surveyor of Taxes, in any first or additional first assessment or by an objection by the Surveyor of Taxes to an assessment made by the Additional Commissioners may appeal to the General Commissioners, on notice in writing to the Surveyor, within twenty-one days after the date of notice of assessment or objection. And an owner or person in receipt of rent of any lands, though not the occupier, who is aggrieved by the amount of the annual value of the lands under Schedule A is given the same right of appeal as if the assessment were made on him instead of the occupier. The General Commissioners have power, where reasonable cause is shown, to extend time for appealing or postpone its hearing or admit the appeal to be made by any agent, clerk or servant, and where a person, before appealing but after assessment made, has removed from one division to another the Commissioners of Inland Revenue may authorize the Commissioners of the division to which he has removed to hear and determine his appeal (S. 136).

Notice of the day for hearing appeals is to be given to every appellant and the General Commissioners are to meet and hear them. The Surveyor and assessor are entitled to be present, produce evidence, and give reasons in support of the assessment or surcharge. And the General Commissioners may on any appeal permit either the subject or the Crown to plead by Counsel or Solicitor, *viva voce* or in writing, or they may hear a member of an incorporated Society of Accountants, and if they refuse to do so the appellant may appeal to the Special Commissioners instead, who *must* hear Counsel,

Solicitor or such Accountant. The majority of the Commissioners present decide after evidence (and the appellant may be examined on oath or affirmation) and they may charge the appellant in an amount even in excess of the assessment or surcharge or may reduce either. Appeals against surcharges are to be heard and determined in like manner as appeals against first assessments. If a surcharge is allowed on appeal by the General Commissioners, in whole or in part, assessment on the amount of the surcharge allowed is to be in treble the rate of tax unless the Commissioners are of opinion there was reasonable doubt or the original statement was sufficient or if not sufficient that its insufficiency was not wilful with intent to defraud, or that the appellant was prevented from making an amended return in due time by sufficient cause, when they may charge at the single rate of tax (S. 137). If on appeal against assessment under Schedule A. or Schedule B. dispute arises as to the annual value of lands, etc., the General Commissioners may, if they think it needful, and shall, if required by the appellant, direct appellant to cause a valuation to be made on oath by a person of skill named by them " and the annual value shall be determined in accordance with that valuation "—if the appellant does not proceed, with effect, to cause the valuation to be made the Commissioners are to determine the annual value to the best of their judgment. If the value found by such valuation exceeds that alleged by appellant they may order him to pay the costs and charges of the valuation, or if they think the appellant was not in default (*i.e.*, the requirement was reasonable) order payment thereof by the Commissioners of Inland Revenue. The Section does not apply within the administrative County of London (S. 138). On notice of appeal against an assessment by Additional Commissioners (or if the General Commis-

sioners see cause to allow the objection of the Surveyor to any such assessment) the General Commissioners may issue a precept to the appellant to deliver within a time named a Schedule of his property and gains from any trade or vocation with amounts from each separate source and any deductions made and may issue further precepts until complete particulars have been furnished to their satisfaction. The required Schedule must be delivered within the time limited, under penalty for default, and the Surveyor may take copies or extracts therefrom (S. 139).

A person who has delivered a statement or schedule and discovers any omission or error therein may deliver another rectifying it—this frees him from proceedings for the original error. If the statement or schedule is not delivered within the time limited, no proceedings can be taken if he delivers it before such proceedings are commenced. And if commenced before the General Commissioners and they are satisfied no fraud or evasion was intended they may stay them—so if the proceedings have been commenced in any Court and the General Commissioners certify that in their opinion no fraud or evasion was intended the Court may stay proceedings on such terms as the Court thinks fit (on summary application). The Commissioners have power to extend time for delivery (S. 140). The scope of this Section (S. 129 in the Income Tax Act, 1842) was considered in A. G. *v.* Till, (1910) A. C. 50.

The Surveyor may object to any such Schedule stating in writing the cause of his objection and giving notice in writing to the person to be charged in order that he may appeal and no assessment is to be confirmed or altered until any appeal against such objection has been determined (S. 141).

The Commissioners may on appeal disallow any

objection of the Surveyor or on hearing an appeal confirm or alter the assessment of the Additional Commissioners (S. 142) see R. *v.* Chew, (1894) 71 L.T. 541.

Whenever the General Commissioners are dissatisfied with an assessment delivered to them by the Additional Commissioners, or with a Schedule, or if they require further information, they may by precept put any questions in writing concerning the assessment or Schedule or any matter which is or ought to be contained therein, or as to deductions made, and may require true answers in writing signed by the person to be charged within seven days after the service of the precept. These questions must be answered in writing and the answers signed, or he may tender himself for oral examination and may object and refuse to answer any question, but such answers as he gives are to be taken down in writing, read over to him, amended if he desires, and then he may be required to verify them on oath. If a clerk, agent, or servant, tenders himself for examination on behalf of the person to be charged the same provisions apply (S. 143). The General Commissioners have power to summon and examine on oath any person they think able to give evidence (but not a person confidentially employed in the affairs of a person to be charged—such person has the same right to refuse to answer that the person to be charged has under S. 143). Not appearing when summoned, or refusing to be sworn or to answer any lawful question, is the subject of a penalty —the penalty for refusing to be sworn or refusing to answer does not apply to any clerk, agent and servant or person confidentially employed (S. 144).

The General Commissioners are, according to the best of their judgment, to make an assessment where after issue of a precept no Schedule is delivered, or any clerk, etc., of the person to be charged or summoned does not

appear, or the person to be charged or his clerk, etc., declines to answer any question, or objection is made to a Schedule and no appeal is made against the objection, or the Commissioners allow the Surveyor's objection (S. 145).

When the General Commissioners charge tax under Schedule D. in excess of that shown by the person's statement or schedule, or discover that a charge in excess ought to be made at any time within three years after the year of assessment, they may, unless satisfied the omission did not proceed from fraud or gross neglect, charge in respect of the excess treble tax (or less), and on neglect or refusal to deliver a statement or Schedule may assess him not only on an estimate of their own but treble tax thereon (S. 146).

Where proceedings to an assessment under Schedule D. are taken before the Special Commissioners the person assessed or the Surveyor may appeal against their assessment in like manner and under like provisions as in case of appeals against assessments by the Additional Commissioners. Any such appeal is to be determined by the Special Commissioners, and if either the person assessed or Surveyor thereupon expresses dissatisfaction with the assessment, as erroneous in any particular, the Special Commissioners are to state and sign a Special case and transmit it to Commissioners of Inland Revenue for their opinion. The Commissioners of Inland Revenue subscribe their opinion on the case and their decision is final subject however to statement of a case for the opinion of the High Court (S. 147).

An appeal against :—an assessment under Schedule D. or an objection by a Surveyor to such an assessment, or a surcharge under that Schedule, or an assessment in respect of any concern described in Rules 1 and 2 of No. III. of Schedule A. may be made to the Special, instead

of the General, Commissioners on notice in writing to the Surveyor within the time limited for notices of appeal in similar cases. Their decision is final subject to the statement of a case for the High Court. But no claimant for total exemption (income from all sources under £130 a year) may appeal to Special Commissioners instead of General Commissioners (S. 148).

Immediately after determination by General or Special Commissioners on *an appeal* under the Act, the appellant or Surveyor may demand a case stated on any point of law, within twenty-one days after the determination, by notice in writing addressed to the Commissioners' clerk and must pay a fee of 20s. therefor : the case is to set forth the facts and the determination and the party requiring it shall transmit it when stated and signed to the High Court within seven days after receipt and, when so transmitting, give notice to the other side and a copy of the case. The High Court determines the question of law, and may refer back the case for amendment and order payment of costs. Appeal lies from the High Court to the Court of Appeal and thence to the House of Lords. The tax is to be paid notwithstanding appeal but if the High Court reduce the assessment the excess is to be repaid with such interest as the Court may allow, and if the Court decides too little has been paid the amount unpaid is recoverable as arrears (but without any penalty applicable to arrears) (S. 149). The right to have a case stated (unless expressly conferred as it has been by some other provisions of the Act in certain cases) only arises on an appeal. See on this point Bruce *v.* Burton, (1901) 85 L.T. 227, and Furtado *v.* City of London Brewery Co., Ltd., (1914) 1 K.B. 709.

When a person either on his own account or on behalf of another person has been assessed to tax twice for the same year and for the same cause, on proof of double

assessment to the General Commissioners acting for the division, in a parish of which the second assessment was made, they are to cause it to be vacated. The Commissioners of Inland Revenue are also to cause any double assessment to be vacated and if payment has been made on both assessments shall order repayment of the excess (S. 151).

PART VIII.

Collection.

The machinery for collection may be given shortly.

As to assessments by—

General Commissioners :—When any assessments have been signed and allowed by them and the time for appeals has past, their clerk prepares two duplicates which they sign and seal. The original assessments are kept for their use, one of the duplicates is delivered to the Surveyor of Taxes for the district, the other to the Collector of the parish (for which the assessment was made) with a warrant authorizing collection of the tax assessed.

Special Commissioners :—An extract from any assessment of theirs certified by their clerk in prescribed form is authority to the officer receiving it to receive and account for the tax mentioned in the extract. If the tax is not paid to him, the Special Commissioners are to make out a duplicate of the assessment and deliver it and a warrant to levy to the collector of the parish in which the person charged resides and the collector is to levy under the warrant.

Commissioners for any Public Department or Office :—If appointment of a collector is authorized, the Commissioners are to make out duplicates of assessment and warrants for collection and deliver to their collector

who is authorized to levy just as a collector of a parish. Where the tax on any salaries, etc., of any Public Office or on any annuities, pensions, or stipends is deducted duplicate assessments are to be delivered to the proper officers in the department or office and the officers are to be responsible for all deducted tax and pay it over.

The machinery for collection of assessments made under a number or letter (a person chargeable under Schedule D. has an option of being so assessed) is of no general interest, recourse being seldom had to it.

Income Tax is, as a rule (S. 157), payable on or before the 1st day of January in the year of assessment (*i.e.*, tax for the year 6th April, 1917, to 5th April, 1918, on 1st January, 1918) if assessed by that date, if assessed later it becomes due the day after the assessment is signed and allowed.

The exceptional provisions are :—

(1) Tax charged under No. I. or No. II. of Schedule A. : tax on any individual or firm under Schedule B. for lands occupied for husbandry only ; tax on any individual or firm under Schedule D. *or* the rules thereof (*e.g.*, Schedule A., No. III.) in respect of the profits or gains of any trade, profession or vocation ; tax on any individual in respect of any office or employment under Schedule D. or Schedule E. (except individuals whose tax is deducted at definite intervals of less than half a year, and weekly wage earners) (see below). These are payable in two instalments, the first on or before 1st January in the year of assessment or day after assessment signed and allowed if after 1st January (see above) ; the second on or before 1st July following (*i.e.*, after the year of assessment). Provisions for recovery of the whole tax apply in the same manner to each instalment.

(2) Railway Companies (in England and Ireland) pay tax under Schedule D. by four quarterly payments on

or before 20th June, September, December, and March in each year.

(3) Tax payable by weekly wage earners, who under the Act are to be assessed and charged quarterly (see Rule 2 of Rules for Cases I and II., Schedule D.), is payable as prescribed by any regulations of Commissioners of Inland Revenue.

Collectors must, when the tax becomes payable, make a demand of payment either personally or at the last abode of the person charged or on the premises charged ; and the demand note of tax under Schedules A. and B. must describe the property assessed, the amount of the assessment, and the rate at which tax is charged thereon ; and on payment they must give a receipt which (S. 217) is exempt from stamp duty. Payment of the tax under Schedule D. may be made in advance under discount.

Collection by means of stamps is provided for.

If a person chargeable to tax is an infant or dies, the parent, guardian, or tutor, of the infant and personal representative of the deceased are liable for the tax and may be proceeded against as any other defaulter. But an infant having no trustee or guardian controlling or managing his property may be assessed to income tax in respect of personal earnings. Rex *v.* Newmarket Income Tax Commissioners, *ex parte* Huxley, (1916) 1 K.B. 788. On death of owner occupier of lands assessed under Schedule A. the heirs, executors or administrators who become entitled to the rents and profits of the land are liable for all arrears of tax or if none for tax up to the time of death, and in either case tax for the remainder of the year, according to their interests, without any new assessment.

On neglect or refusal to pay, the collector is, after demand made, to distrain on the premises in respect of which the tax is charged, or the person charged by his

goods and chattels, and all such other goods and chattels as the collector is by the Act authorized to distrain, without further authority than the warrant delivered to him on his appointment.

Non-payment, after service of the demand note, is evidence of refusal, Lumsden *v.* Burnett, (1898) 2 Q.B. 177 ; after allowing reasonable time for payment, the collector may distrain and if the tax is one charged on the land (*e.g.*, the window tax formerly, inhabited house duty and Schedule A., income tax now) he may seize the goods thereon not only belonging to the debtor but to third persons also (see Juson *v.* Dixon, (1813) 1 M. and S. 601, and MacGregor *v.* Clamp & Son, (1914) 1 K.B. 289) : though if the tax is one which is solely and strictly charged on the person who has to pay it distress can only be levied on the goods of the person chargeable with the tax (Shaftesbury *v.* Russell 1 B. and C. 666). The Law of Distress Amendment Act, 1888, does not apply for the Crown is not named in that Act, Macgregor *v.* Clamp and Son (*ubi supra*). If the debtor is a Company being wound up under the Companies (Consolidation) Act, 1908, the Crown's right of distress is not affected thereby. *re* Henley & Co., (1878) 9 Ch. D. 460. *In re* Oriental Bank Corporation, (1884) 28 Ch. D. 643.

For the purpose of levying any such distress the collector may break open in the daytime any house or premises, calling to his assistance any constable or other peace officer, but he must first for this purpose obtain a warrant and such warrant must be executed under his direction and in his presence. Any distress must be kept for five days at the costs of the debtor, then the distress must be appraised and sold by public auction. If a collector advances and pays over to the proper officer any money on account of tax charged on some other person (at his request or not) he may in default of

repayment within six months levy the tax as if he had not advanced the sum. As to the time during which the collector's right of distress lasts, see Elliott *v.* Yates, (1900) 2 Q.B. 370.

When any tax becomes in arrear any execution or process (except distress for rent by landlord) against the goods or chattels of the debtor is subject to the Crown's right to tax for one whole year—an assign of the goods and chattels, in claiming under an assignment made after the tax is in arrear, is in the same position. The claimant to the goods under process or assignment must pay the year's tax before he can proceed to enforce his process or title, if he fails the collector can proceed and levy the whole of the tax in arrear (S. 163).

If lands, charged under Schedule A., are unoccupied and no distress can be found thereon when the tax is payable, and subsequently there is distress to be found on the lands, he may distrain them " under the same powers as if a distraint had been made at the time the tax became due and as if the occupier had been in occupation at that time " (S. 164).

On neglect or refusal to pay tax within ten clear days after demand and default of sufficient distress the General Commissioners may commit defaulter to prison until payment or security for the tax and costs of arrest, etc. For his release the Governor of the prison requires the warrant of the General Commissioners issued by direction of the Treasury or of the Commissioners of Inland Revenue " (S. 165).

Whenever a person assessed in one parish has removed to another, the tax remaining unpaid, a certificate of the tax in arrear is to be transmitted to the General Commissioners, or Special Commissioners acting as General Commissioners, for the division comprising the parish in which the defaulter is, and they are to cause the tax

to be levied under their warrant (S. 168); if he has changed his parish but not his income tax division the Commissioners by their certificates direct the collector of the parish to which he removed to levy. In either case in default of sufficient distress the Commissioners for the division are, by warrant, to commit him to prison. Any tax charged under the Act may also be recovered with costs in the High Court as a Crown debt or by any other means for recovering a debt of record to the Crown and tax assessed quarterly in respect of weekly wage earners, without prejudice to other methods of recovery, is recoverable summarily as a civil debt.

Tax charged on tithes or teinds may be distrained for on the tithes or teinds or on any other goods and chattels of the owner of the tithes or teinds wherever found—the Collector and officer have like powers to those exercisable in relation to tax in other cases under the Act. (S. 170 (1)).

Where tax is charged on any composition for, or any rent or payment in lieu of, tithes or teinds, the occupier of the lands charged with the composition rent or payments shall be answerable for the tax so charged and may deduct the same out of the next payment on account thereof (S. 170 (2) (*a*)). Where tax is charged on the profits of manors or royalties, markets or fairs, or on tolls, fisheries or other annual or casual profits not distrainable, the owner, or occupier, or receiver of profits shall be liable for and entitled to retain and deduct out of profits (S. 170 (2) (*b*)); in these cases (2 (*a*) and 2 (*b*) of S. 170) the collector may distrain on the persons answerable.

Where a married woman has been separately assessed (on her own or husband's application) the power to distrain in case of non-payment may be exercised over husband's goods as well as wife's but before the hus-

band's goods and chattels can be distrained a written demand must be made on him or left at his usual place of residence, and he must have seven days to satisfy his wife's tax (S. 171).

The provisions for accounting and payment by collectors, the powers of control over them exercisable by the Commissioners of Inland Revenue and the right of the Surveyor of Taxes to inquire into and check their collection and report to the Commissioners of Inland Revenue, and the duties of collectors as to delivering Schedules of deficiencies and arrears are matters of internal administration of no general interest; but the Schedule of defaulters to be made out by the General Commissioners after examining the collector on oath (S. 175 (2) (ii.) and (5)) and the Schedule of arrears (S. 172 (2) (*b*)) to be delivered by the Collector to the Surveyor of Taxes, which forty days after may be certified by the Commissioners of Inland Revenue to the High Court (notice having been given to each defaulter therein during the forty days), are both of more general importance; for the power of the collector to recover arrears determines, as to any arrear included in any Schedule, when that Schedule is certified and forwarded to the High Court; and a Schedule of arrears, or a Schedule of defaulters duly certified to the High Court, are sufficient evidence of a debt due to the Crown and sufficient authority to a Judge of the High Court to cause process to issue against the defaulters (S. 176 (2) and (3)).

Powers to revoke the collector's appointment, to arrest him and seize his estate, and provisions as to proceedings against a Collector and his sureties are not of general interest. A parish is not liable for the acts or defaults of a collector appointed by the Commissioners of Inland Revenue or who gives security to the Crown but otherwise a parish in England is liable for the tax charged on the

parish, its due demand and collection and receipt by the Crown ; and the proceedings to be taken to enforce the liability of the parish are specified. A variety of penalties on collectors and a penalty on persons not duly authorized who receive from a collector his tax receipts complete the Statutory provisions as to collection.

PART IX. dealing with Ireland is omitted.

PART X.

Miscellaneous.

S. 207. Directions in Fifth Schedule to be observed as to delivery of statements.

S. 208. Provisions in the Act applied to the tax under any Schedule are, if also applicable to tax under any other Schedule and not repugnant to the provisions thereunder, to be applied thereto as if expressly directed (see Tennant *v.* Smith (1892) A.C. 150).

S. 209. (1) In arriving at " profits or gains." (*a*) no other deductions are to be made than such as are expressly enumerated in the Act. (*b*) No deduction is to be made on account of any annual interest, annuity, or other annual payment to be paid out of such profits or gains " in regard that a proportionate part of the tax is allowed to be deducted on making any such payment." (See above, Collection at source pp. 140-148.)

(2) In arriving at the amount of profits or gains from any property or from any office or employment of profit no deduction is to be made on account of capital employed or of loss sustained in any trade or in any profession, employment or vocation.

S. 210. To ensure collection in due time of tax which may be granted for any year commencing 6th April, all provisions in any Act relating to tax (including Supertax) in force the preceding day are to have effect as if

that tax had been granted and the provisions had been applied to it.

S. 211. Where any payments have been made on account of interest, dividends, or other annual profits or gains before the pasing of the Act imposing tax for that year, and tax has not been charged or deducted therefrom at the rate ultimately imposed for the year, the amount not charged or deducted is to be charged under Schedule D. under Case VI. thereof and the agents entrusted with the payment of the interest, dividends, or other annual profits or gains are to furnish to the Commissioners of Inland Revenue a list of the payees and their addresses and the amounts paid on requisition made by the Commissioners of Inland Revenue.

S. 212. No provisions in County Rates Act, 1852, or Union Assessment Committee Act, 1862, are to authorize any Assessment Committee under those Acts to require copies or extracts from, or evidence as to, any document relating to assessment or collection of tax on profits of quarries, mines, ironworks, gas works, or other concerns in the nature of trade, chargeable under Schedule A. (No III.).

S. 213. No Act or letters patent to exempt from tax. (See Duke of Argyll *v.* Commissioners of Inland Revenue, (1914) 109 L T. 893.)

S. 214. As to execution of warrants or precepts.

S. 215. Forms in sixth Schedule (which may be varied by Commissioners of Inland Revenue) to be sufficient in law, and power to Commissioners of Inland Revenue to prescribe forms to be used from time to time.

S. 216. Want of form, or mistake, or omission in assessments, charges, warrants, and other proceedings, purporting to be in pursuance of the Act not to cause avoidance if substantially correct. And assessments not to be impeached for mistake in name of person liable,

description of property, or amount of tax, etc., if in substance sufficient.

S. 217. Exemption from Stamp Duty of receipts, certificates of payment, affidavits, appraisements and valuations, made for the purposes of the Act and (in England) of security given by Collector for due performance of his duty.

S. 218. Assessments and books, etc., to be the property of the General Commissioners.

S. 219. Person having custody of books and papers relating to tax to deliver up (under penalty) on one month's notice in writing.

S. 220. Provision as to service and delivery of notices and forms.

S. 221. (1) No proceedings for fine, penalty or forfeiture under the Act except by order of Commissioners of Inland Revenue and in name of officer or in England in name of Attorney-General for England.

(2) Fine or penalty under the Act may (save as otherwise provided) be sued for, with full costs of suit, in High Court and "any such penalty shall be sued for by information."

(3) Proceedings in High Court for fine or penalty, and proceedings in England before General Commissioners may be commenced within three years next after fine, etc., incurred.

(4) Where pecuniary penalty not exceeding £20, or penalty exceeding £20 directed to be added to the assessment, is recoverable in High Court that penalty may in lieu of being so recovered be recovered in England before the General Commissioners by proceedings within twelve months after penalty incurred.

(5) Proceedings before any General Commissioners to be by way of information in writing and upon a summons to the accused to appear at time and place fixed by them,

and they are to give judgment for the penalty, or such part as they may mitigate the same to, and assess the penalty on the accused by way of supplementary assessment and the penalty is to be levied as tax. The adjudication on such proceedings to be final and conclusive and proceedings and decree of Commissioners shall not be removable by any process whatsoever into any Court of Law.

S. 222. Commissioners of Inland Revenue may mitigate any fine or penalty, or stay or compound proceedings therefor, and after judgment further mitigate or entirely remit, and may order release of person imprisoned for any offence before his term of imprisonment has expired. Treasury may mitigate or remit any fine or penalty. Monies arising from fines, penalties, forfeitures and costs to be accounted for as Commissioners of Inland Revenue direct.

S. 223. Where increased rate of tax imposed as penalty, or part of or addition to a penalty, the penalty and increased rate of tax may be added to the assessment and collected like tax.

S. 224. Provisions of Act not to affect criminal proceedings for any felony or misdemeanour.

S. 225. Fine for obstructing officer in execution of duties.

S. 226. Penalties for vexatious surcharges, etc., by Surveyor and for fraud or under charge in executing his office.

S. 227. Penalty for false statement to obtain allowance or repayment.

(S. 228. Scotland and Ireland).

S. 229-234. Of no general interest.

S. 235. All matters within the jurisdiction of High Court under the Act to be assigned in England to King's Bench Division of High Court.

S. 236. Regulations of Commissioners of Inland Revenue as to certain matters to be laid before Parliament.

S. 237 (*Interpretation*). In this Act, unless the context otherwise requires:—"Annuity fund" means, where an annuity fund is not kept separately from the life assurance fund of an assurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns to the Board of Trade, under the Assurance Companies Act, 1909;

"Assurance company" means any persons or bodies of persons to which the Assurance Companies Act, 1909, applies;

"Assessor" includes a surveyor acting as assessor when empowered so to act;

"Body of persons" means any body politic, corporate, or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate;

"City division" means a division consisting of any city, borough, town, or other place, under the separate jurisdiction of any body of general commissioners;

"County division" means a division other than a city division and consisting of any county, riding or shire, or of any hundred, rape, lathe, wapentake, or other division of a county, riding, or shire, under the separate jurisdiction of any body of general commissioners;

"Foreign life assurance fund" means any fund representing the amount of the liability of an assurance company in respect of its life assurance business with policy-holders and annuitants residing out of the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom,

and, where such a fund is not kept separately from the life assurance fund of the company, means such part of the life assurance fund as represents the liability of the company under such policies and annuity contracts; such liability being estimated in the same manner as it is estimated for the purposes of the periodical returns of the company to the Board of Trade, under the Assurance Companies Act, 1909;

"Gazette" means, as the context requires, "London Gazette," "Edinburgh Gazette" or "Dublin Gazette";

"Incapacitated person" means any infant, married woman, lunatic, idiot, or insane person;

"Land Tax Commissioners" means the commissioners appointed, under authority of Parliament, for executing the Acts relating to land tax;

"Life assurance business" includes the business of granting annuities;

"Parish" means any city, town, ward, township, tithing, parish, place or precinct, or part thereof, for which a separate assessment of income tax has been, or can be, made, or for which an assessor or collector has been, or can be, appointed;

"Surveyor" means a surveyor of taxes and includes an inspector of taxes;

"Trade" includes every trade, manufacture, adventure or concern in the nature of trade;

"Weekly wage-earner" means a person who receives wages which are calculated by reference to the hour, day, week or any period less than a month, at whatever intervals the wages may be paid, or who receives wages, however calculated, which are paid daily, weekly, or at any less intervals than a month;

"Year of assessment" means, with reference to any tax, the year for which such tax was granted by any Act granting duties of income tax.

S. 238. Repeal of Acts in seventh Schedule, with savings.

S. 239 (1) Short title :—The Income Tax Act, 1918. (2) This Act to come into force 6th April, 1919, but not to operate as to duties of income tax granted prior to that date, in respect of which the repealed acts are still to operate.

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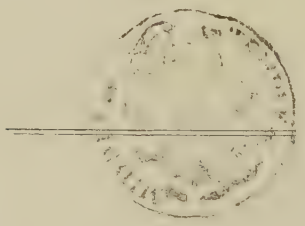

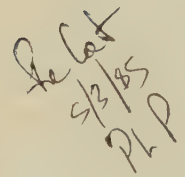

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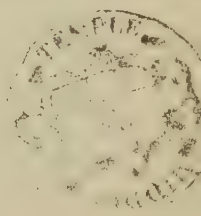

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C.A. 6. Return of Allotments to be filed with Registrar
C.A. 7. Followers for ditto ditto
C.A. 6*a*. Nomination of Allottees
C.A. 8. Particulars for Registration of Mortgages and Charges
C.A. 8*a*. Ditto of a Series of Debentures
C.A. 8*b*. Ditto ditto more than one issue
C.A. 10. Notice of satisfaction of Mortgage, with Declaration annexed
C.A. 36. Statement by a Private Company of Commission paid on Shares issued
C.A. 9. Notice of Statutory Meeting, 1*s.* 6*d. per quire*
C.A. 9*a*. Notice of Ordinary General Meeting, 1*s.* 6*d. per quire*
C.A. 11. Report of Statutory Meeting
C.A. 17. List of Members to be produced at the Statutory Meeting
C.A. 18. Followers for ditto ditto
C.A. 12. Copy of Register of Directors
C.A. 12*a*. Particulars of Directors under Companies Act, 1917.

FORMS UNDER THE COMPANIES ACTS, 1908 TO 1917 *continued.*

(3) FOR GENERAL USE.

2d. each, 1s. 9d. per dozen, except where otherwise specified.

C.A. 37. Notice of Change of Situation of Registered Office
C.A. 38. Notice of Increase of Capital
C.A. 39. Statement of Increase of Nominal Capital
C.A. 6. Return of Allotments to be filed with Registrar
C.A. 7. Followers for ditto ditto
C.A. 40. Form of Special Resolution. Section 50, *1s. 6d. per quire*
C.A. 41. „ „ Extraordinary Resolution, *1s. 6d. per quire*
C.A. 12. Copy of Register of Directors and Managers
C.A. 44. Summary of Capital and Shares and List of Members (Annual Return), with space for one or two classes of Shares, *4d. each.*
C.A. 44. Ditto ditto for Private Company, *4d. each*
C.A. 44*a*. Ditto ditto for Private Company, 26 Shareholders, *2d. each*, *1s. 9d. per dozen*
C.A. 45. Ditto ditto for three classes of Shares, *4d. each.*
C.A. 46. Followers for one or two classes of Shares, *2d. each*, *1s. 9d. per dozen*
C.A. 46*b*. Schedule of occupations of Directors, *1d. each*
C.A. 47. Followers for three classes of Shares, *2d. each*, *1s. 9d. per dozen*, *3s. 6d. per quire*
C.A. 48. Followers, with space for use of Banking Company, *2d. each*, *1s. 9d. per dozen*
C.A. 50. List of Stockholders, *4d. each*, *3s. 6d. per dozen*
C.A. 51. Followers for ditto, *2d. each*, *1s. 9d. per dozen*
C.A. 52. Notice of Consent to take name of Subsisting Company
C.A. 53. Statement, Form C (Section 108), *2s. 6d. per quire*
C.A. 54. Notice of Appointment of Receiver or Manager
C.A. 55. Receiver's Abstract of Receipts and Payments
C.A. 56. Followers for ditto ditto
C.A. 57. Notice of ceasing to Act as Receiver or Manager
C.A. 58. Notice of Appointment of Liquidator
C.A. 59. Notice (for *Gazette*) by Liquidator convening Meeting of Creditors
C.A. 60. Notice to Creditors ditto ditto — *1s. 9d. per quire*
C.A. 61. Notice for *Gazette* of Special Resolution for Voluntary Winding-up — *1s. 9d. per quire*
C.A. 61*a*. Notice to Creditors to send Claims
C.A. 61*b*. Notice for Dividends, *1s. 6d. per dozen*, *2s. 6d. per quire*
C.A. 62. Notice for convening Final Winding-up Meeting, *1s. 9d. per quire*
C.A. 63. Liquidator's Return of Winding-up Meeting, *2d. each*, *1s. 9d. per dozen*
C.A. 64. Transfer of Shares or Stock (common)
Ditto ditto on thin paper for Foreign use
C.A. 65. Ditto ditto (Companies Act) — *1s. 9d. per quire*
C.A. 66. Transfer of Bonds or Debentures — *1s. 9d. per quire*
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C.A. 68. Proxy, Companies Act — *1s. 9d. per quire*
C.A. 69. Application for Shares, *2s. 6d. per quire*
C.A. 70. Letter of Allotment, *2s. per quire*
C.A. 71. Renunciation of Shares, *1s. 6d. per quire*
C.A. 72. Notice of Call, *2s. per quire*
C.A. 73. Transfer Certificate Forms, *2s. per quire*
C.A. 73*a*. Certificate required on Transfers made for a nominal consideration, *1s. 9d. per quire*
C.A. 74. Share Certificate, "Fully Paid," *4d. each*, *3s. 6d. per dozen*
C.A. 74*a*. Ditto "Partly Paid."
Ditto in Books of 25, ¼-bound, *7s. 6d.*
C.A. 75. Mortgage Debenture Bond, *6d. each*, *4s. 6d. per dozen*
C.A. 76. Order for Dividend, *1s. 6d. per quire*
C.A. 77. Dividend Warrant, *1s. 6d. per quire*
Certificate by Transferor and Transferee as to Trading with Enemy, *6d. per dozen*, *3s. 6d. per hundred* (Gummed)

FORMS UNDER THE COMPANIES ACTS, 1908 TO 1917—*continued.*

(4) FOR FOREIGN COMPANIES.

2d. each, 1s. 9d. per dozen.

1 F. List of Documents presented for Filing
2 F. Return of Directors
3 F. Returns of Persons authorized to accept Service of Process
4 F. Notice of Alteration in the Charter or Statutes
5 F. Notice of Alteration in the List of Directors
6 F. Notice of Alteration of Name or Address of the person authorized to accept Service
7 F. Statement of Affairs

(5) FOR WINDING-UP.

No.
822 Liquidator's Account of Receipts and Payments, *2d. each*, 1/9 *dozen*, 3/6 *per quire*
823 Continuation Sheets, *2d. each*, 1/9 *dozen*, 3/6 *quire*
824 Affidavit verifying Liquidator's Account, *1d. each*, 1/6 *quire*
825 Liquidator's Trading Accounts, *2d. each*, 1/9 *dozen*, 3/6 *quire*
826 Continuation Sheets, *2d. each*, 1/9 *dozen*, 3/6 *quire*
827 List of Dividends or Composition, *2d. each*, 1/9 *dozen*, 3/6 *quire*
828 Continuation Sheets, *2d. each*, 1/9 *dozen*, 3/6 *quire*
829 List of Amounts Paid or Payable to Contributories, *2d. each*, 1/9 *dozen*, 3/6 *quire*
830 Continuation Sheets, *2d. each*, 1/9 *dozen*, 3/6 *quire*
— Companies Cash Book for Board of Trade Audit, *4d. each*, 3/6 *dozen*
— Companies Cash Book, copy for filing, *2d. each*, 3/6 *quire*
LR1 Summary of Liquidator's Accounts under Rule 173, *2/- quire*
C26 Statement of Affairs. Front sheet
(A) Unsecured Creditors
(B) Creditors fully Secured (not including Debenture Holders)
(C) Creditors partly Secured
(D) Liability of Company on Bills discounted other than their own Acceptances for Value
(E) Other Liabilities
(F) Preferential Creditors for Rates, Taxes, Salaries and Wages
(G) List of Debenture Holders
(H) Property
(I) Debts due to the Company
(J) Bills of Exchange, Promissory Notes, &c., on hand available as Assets
(K) Unpaid Calls
(L) List of Founders' Shares
(M) List of Ordinary Shares
(N) List of Preference Shares
(O1) Deficiency Account where Winding-up Order made within three years of formation of Company
(O2) Do. Order made more than three years after formation of Company
(P) In substitution for such lists A to O as will have to be returned blank

3/6 per quire.

C 66 Affidavit of Proof of Debt, 1/9 *per quire*
C W U No. 3. Form of Summons—General, 1/9 *per quire*

JOINT STOCK COMPANIES' BOOKS.

(Prices on application.)

FOOLSCAP FOLIO BOOKS.	Size of Leaf in inches.	For 25 Share-hold'rs	For 50 Share-hold'rs	For 100 Share-hold'rs	For 20 Share-hold'r
COMBINED REGISTER OF MEMBERS, comprising in one book—					
Register of Applications and Allotment of Shares Register of Members and Share Ledger Register of Transfers Register of Directors Register of Mortgages or Charges Register of Debentures Register of Probates Annual Summary, Lists of Shareholders and Directors (for 6 Years) Indexed at front, and a projecting tab to show each pattern.	Half bound, cloth sides Whole bound.	$12\frac{1}{2} \times 8$ $12\frac{1}{2} \times 8$			
Register of Members and Share Ledger only, half bound, cloth sides		$12\frac{1}{2} \times 8$			
Register of Members and Share Ledger only, whole bound		$12\frac{1}{2} \times 8$			
		25 openings	50 openings	100 openings	
Register of Members for GUARANTEE COMPANY, half bound, cloth sides		$12\frac{1}{2} \times 8$			
Register of Applications and Allotment of Shares, half bound, cloth sides		$12\frac{1}{2} \times 8$			
Register of Applications and Allotment of Shares, whole bound		$12\frac{1}{2} \times 8$			
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" " " whole bound		$12\frac{1}{2} \times 8$			
Register of Directors, half bound, cloth sides		$12\frac{1}{2} \times 8$			
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Register of Debentures, half bound, cloth sides		$12\frac{1}{2} \times 8$			
" " " whole bound		$12\frac{1}{2} \times 8$			
Register of Transfers of Debentures, half bound, cloth sides		$12\frac{1}{2} \times 8$			
Register of Transfers of Debentures, whole bound		$12\frac{1}{2} \times 8$			
Register of Debenture Stock Holders, half bound, cloth sides		$12\frac{1}{2} \times 8$			
Register of Debenture Stock Holders, whole bound		$12\frac{1}{2} \times 8$			
Register of Transfers of Debenture Stock, half bound, cloth sides		$12\frac{1}{2} \times 8$			
Register of Transfers of Debenture Stock, whole bound		$12\frac{1}{2} \times 8$			
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" " " " whole bound		$12\frac{1}{2} \times 8$			
Register of Probates, half bound, cloth sides		$12\frac{1}{2} \times 8$			
" " " whole bound		$12\frac{1}{2} \times 8$			
MEDIUM FOLIO BOOKS.					
Register of Members and Annual List of Shareholders and Directors, whole bound		$16 \times 10\frac{1}{4}$			
Register of Transfers, whole bound		$16 \times 10\frac{1}{4}$			
Register of Applications and Allotment of Shares, whole bound		$16 \times 10\frac{1}{4}$			
Register of Probates		$16 \times 10\frac{1}{4}$			

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